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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2015–BT–CRT–0013]

RIN 1904–AD53

Energy Conservation Program: Exempt External Power Supplies Under the EPS Service Parts Act of 2014

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On November 18, 2015, the U.S. Department of Energy ("DOE") issued a notice of proposed rulemaking to exempt certain types of external power supplies consistent with the EPS Service Parts Act of 2014. That proposal, which serves as the basis for this final rule, explained that the Act exempted certain EPSs made available by a manufacturer as a service or spare part from the energy conservation standards promulgated in a February 2014 final rule. The proposal sought to codify this exemption and certain related reporting requirements. This rule adopts the November 2015 proposal along with related provisions to require manufacturers to annually report the total units of exempt EPSs shipped as service and spare parts that fail to meet the appropriate energy conservation standards.

DATES: The effective date of this rule is June 15, 2016.

ADDRESSES: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=23*. This Web page will contain a link to the docket for this rulemaking on the *regulations.gov* site. The *regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information may be sent to Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *battery_chargers_and_external_power_supplies@EE.Doe.Gov.*

For legal issues, please contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et *seq.;* "EPCA" or, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency.[1] Part B[2] of Title III establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." External power supplies are among the products affected by these provisions.

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

Background

Section 301 of EISA 2007 established minimum energy conservation standards for Class A external power supplies ("EPSs") manufactured on or after July 1, 2008. (42 U.S.C. 6295(u)(3)(A)). See 42 U.S.C. 6291(36)(C)(i)–(ii). EISA 2007 exempts Class A EPSs from meeting these statutorily-prescribed standards if the devices were manufactured before July 1, 2015, and made available by the manufacturer as service parts or spare parts for end-use consumer products that were manufactured prior to July 1, 2008. (42 U.S.C. 6295(u)(3)(B)) Congress created this limited (and temporary) exemption as part of a broad range of amendments to EPCA under EISA 2007. The provision did not grant DOE with the authority to expand or extend the length of this exemption and Congress did not grant DOE with the general authority to exempt any already covered product from the requirements set by Congress.

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[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act, Public Law 114–11 (April 30, 2015).

[2] For editorial reasons, Part B was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified).

After releasing a preliminary analysis and issuing a proposed set of energy conservation standards, DOE published a final rule prescribing new standards for non-Class A EPSs and amended standards for some Class A EPSs. See 79 FR 7846 (February 10, 2014). These new standards, commonly referred to as Level VI efficiency standards because EPSs subject to these standards are required to be marked with the Roman numeral VI according to the External Power Supply International Efficiency Marking Protocol, apply to products manufactured on or after February 10, 2016. When DOE published the rule, it did not have the authority to provide manufacturers with an exemption for EPSs manufactured after to the compliance date of these new standards if they were made available as service or spare parts to end-use consumer products. Accordingly, despite requests from some commenters who responded to DOE's proposed standards by asking for such an exemption, DOE could provide no such relief as part of that final rule.

On December 18, 2014, Congress enacted the EPS Service Parts Act of 2014 ("Service Parts Act"). That law exempted manufacturers of certain EPSs that are made available as service and spare parts for end-use products manufactured before February 10, 2016 from the energy conservation standards that DOE promulgated in its February 2014 rule. To be exempt under the Service Parts Act, an EPS must meet four separate criteria. Specifically, the EPS must be: (i) Manufactured during the period beginning on February 10, 2016, and ending on February 10, 2020; (ii) marked in accordance with the External Power Supply International Efficiency Marking Protocol; (iii) compliant, where applicable, with the standards for Class A EPSs and certified to DOE as meeting at least International Efficiency Level IV; and (iv) made available by the manufacturer as a service part or spare part for an end-use product manufactured before February 10, 2016.

Additionally, the Service Parts Act permits DOE to require manufacturers of an EPS that is exempt from the 2016 standards to report to DOE the total number of such EPS units that are shipped annually as service and spare parts and that do not meet those standards. See 42 U.S.C. 6295(u)(5)(A)(ii). DOE may also limit the applicability of the exemption if the Secretary determines that the exemption is resulting in a significant reduction of the energy savings that would result in the absence of the exemption. See 42 U.S.C. 6295(u)(5)(A)(iii). Finally, the statute authorizes DOE to provide a similar exemption for EPSs from future energy conservation standards.

On November 18, 2015, DOE published a notice of proposed rulemaking ("NOPR") proposing to codify the provisions of the EPS Service Parts Act of 2014 within the Code of Federal Regulations ("CFR") and solicited comment from the public. 80 FR 71984. As part of the NOPR, DOE sought comment on a number of specific issues including: How manufacturers produce spare or service parts as compared to how manufacturers produce EPS units provided with a new product, the specific language that should be codified regarding the exemption of certain EPSs sold as service or spare parts, and the reporting timeframe for importers and domestic manufacturers to report the total number of units sold in the prior year. DOE analyzed all of the comments received from the list of commenters in Table I–1 in response to the 2015 NOPR and incorporated recommendations, where appropriate, into this final rule.

TABLE I–1—LIST OF COMMENTERS

Organization	Abbreviation
Appliance Standards Awareness Project, National Resources Defense Council, and American Council for an Energy Efficient Economy.	ASAP, et al.
Association of Home Appliance Manufacturers, Consumer Electronics Association, Information Technology Council, and National Electrical Manufacturers Association.	AHAM, et al.
Information Technology Council[3].	ITI
California Investor Owned Utilities.	CA IOUs

II. Synopsis of the Final Rule

DOE is incorporating the statutory provisions described in this preamble into its regulations. DOE is also providing some clarification on the circumstances under which EPSs would be considered spare or service parts. Lastly, DOE is requiring manufacturers who manufacture 1,000 or more exempt EPSs to annually report to DOE the total number of units of exempt EPSs shipped as service and spare parts that do not meet the 2016 standards.

III. Discussion

A. Codifying the Exemption in the CFR

DOE is incorporating the provisions of the Service Parts Act into 10 CFR 430.32 to ensure that the regulations reflect the statutory exemption and that interested parties are able to readily access the content of this new statutory provision. Additionally, since the exemption from the Class A (Level IV) standards for certain EPSs that are made available as service and spare parts expired on June 30, 2015, DOE is also removing the text related to this now-expired exemption from 10 CFR 4320.32(w)(2), and replacing it with the new provisions of the Service Parts Act that exempt certain EPSs from the new and amended direct operation (Level VI) standards.

B. Service or Spare Part EPSs

In the NOPR, DOE explained that the Service Parts Act provides an exemption for certain EPSs that are made available by manufacturers as service or spare parts. DOE observed that most end-use products that use EPSs are sold with the EPS that is necessary to operate that product. DOE proposed that, in applying the statutory exemption, an EPS that is sold with an end-use product would not be considered to be a service or spare part. However, DOE noted that, in its view, any EPS sold separately from an end-use product, including an EPS made available as a replacement for, or in addition to, the EPS originally sold with an end-use product, would be considered an EPS made available as a service or spare part—which would make that EPS potentially eligible to be exempt from the 2016 standards under the Service Parts Act.

To further clarify its application of this statutory exemption, DOE proposed that only those EPSs that are made available as service or spare parts for end-use products that were manufactured before February 10, 2016 (the date that manufacturers must comply with the new and amended standards for direct operation EPSs) would qualify for the exemption. DOE proposed, accordingly, that if an EPS is made available as a service part or spare part for any end-use product that continues to be manufactured after February 10, 2016, or is sold with any end-use product manufactured after that date, that EPS would not be eligible for the exemption.

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[3] DOE notes that ITI also filed supplemental comments after the comment period had closed. These comments, which re-emphasized various points ITI had already made in its timely-filed joint comments with AHAM, were not considered by DOE in finalizing this rule due to their untimely nature.

In the NOPR, DOE further recognized that many EPSs, like those that use an industry standard communication protocol, such as the universal serial bus ("USB"), may be capable of operating many different end-use products. To apply the statutory exemption to the "basic model" concept used in its regulatory scheme, DOE proposed that the exemption would apply to an EPS basic model that a manufacturer makes available only as a service part or a spare part for an end-use product that was manufactured before February 10, 2016, and would not apply to an EPS basic model that a manufacturer makes available as a service part or spare part for end-use products that continue to be manufactured after February 10, 2016. Thus, an EPS basic model would be exempt from the 2016 Level VI standard if, among other criteria, it is made available by the manufacturer only as a service part or a spare part for an end-use product, and only if the end-use product was manufactured before February 10, 2016. DOE sought comment on this proposal from stakeholders and interested parties.

ASAP, et al. supported DOE's efforts to construct a narrowly-defined exemption for EPSs offered as service or spare parts to aid in limiting the sale of a larger number of EPSs than warranted by the intent of the law, stating that "abuse of the exemption could significantly reduce energy savings from the EPS standards." (ASAP, et al., No. 2 at p.2) AHAM, et al. also expressed support for DOE's proposal in their comments noting that "this is a sensible exemption that will allow manufacturers to maintain supplies of replacement parts for older equipment and will also allow warranty and contract compliance by manufacturers, as well as manufacturer compliance with state parts retention laws." (AHAM, et al., No. 3 at p.1)

Similarly, ASAP, et al. strongly supported DOE's interpretation that the exemption should not apply to EPSs made available as spare or service parts that are sold with products manufactured after February 10, 2016. ASAP, et al. asserted that the redesign of EPSs for products manufactured afterward is justified because an EPS that is sold with a product manufactured after February 10, 2016, would already be required to meet the new standards, and thus it does not create undue burden on industry to ensure that EPSs made available as spare or service parts for those same end-use products also comply with the new standards. (ASAP, et al., No. 2 at p.3) The CA IOUs agreed that any spare or service EPS for products manufactured after the compliance date should comply with the 2016 standards because redesigning an EPS or designing a substitute EPS to comply with the standards would not be a significant burden for manufacturers to meet. (CA IOUs, No. 5 at p.2) The CA IOUs also supported DOE's interpretation that the exemption would not apply to EPSs that are sold as spare or service parts but are capable of operating end-use products manufactured both before and after the compliance date. In their collective view, meeting the 2016 standard would not be an undue burden for manufacturers to meet. (CA IOUs, No. 5 at p.2)

ITI disagreed. In its view, the Service Parts Act exemption should apply to all EPSs made available as spare or service parts for end-use products manufactured prior to the 2016 compliance date. (ITI, No. 4 at p.1) It argued that DOE's proposed clarification would deny this exemption to many USBs and other EPSs capable of operating multiple end-use products contrary to the required exemption of the Service Parts Act. ITI further claimed that the apparent reduction in scope of the exemption provides insufficient notice to manufacturers as they were anticipating the exemption to reflect what they believed would be the clear language and scope of the enacted law. (ITI, No. 4 at p.2)

In the NOPR, DOE misstated in one place that, if an EPS is *capable* of operating multiple end-use products, some of which were manufactured before February 10, 2016, and some of which were manufactured after February 10, 2016, then that EPS would not be eligible for the service and spare part exemption since the EPS can operate an end-use product manufactured after February 10, 2016. 80 FR at 71986. DOE understands that this statement in the preamble may have caused confusion. The exemption as DOE proposed in the NOPR, would apply to an EPS basic model that is "*made available* by the manufacturer only as a service part or a spare part for an end-use product." Id. at 71990 (emphasis added). DOE clarifies, and this rule establishes, that an EPS that is *capable* of operating end-use products manufactured on or after February 10, 2016, could be exempt, provided that the manufacturer makes the relevant basic model available only as a service part or spare part for end-use products manufactured before February 10, 2016.

Given the nature of DOE's regulatory scheme, under which the non-compliance of a product is determined on a basic model, not unit-by-unit, basis, this final rule offers a reasonable approach in applying the Service Parts Act's exemption. See 10 CFR 429.114. Applied otherwise, a basic model of EPS would be wholly exempt (*i.e.*, all units of the basic model) from the Level VI standard based solely on the fact that as few as one unit of the basic model was made available by the manufacturer as a service part or a spare part for an end-use product manufactured before February 10, 2016. DOE declines to adopt an interpretation of the statutory exemption that would offer a blanket exemption to such a basic model.

Therefore, DOE is finalizing its proposal that this exemption would apply to an EPS basic model that a manufacturer makes available only as a service part or a spare part for an end-use product that was manufactured before February 10, 2016, and would not apply to an EPS basic model that a manufacturer makes available as a service part or spare part for end-use products that continue to be manufactured after February 10, 2016.

C. Sales Reporting Requirements

The Service Parts Act permits DOE to require manufacturers of an EPS that is exempt from the 2016 standards to report to DOE the total number of such EPS units that are shipped annually as service and spare parts and that do not meet those standards. See 42 U.S.C. 6295(u)(5)(A)(ii). DOE stated that it considered the "shipments" referred to in the statute to be those units sold by either the importer or the domestic manufacturer, and that because importers could have both incoming and outgoing shipments, DOE considered "units sold" to be clearer than "units shipped." See 42 U.S.C. 6291(12) (under EPCA, "manufacture" means "to manufacture, produce, assemble or import").

Accordingly, consistent with the Service Parts Act, DOE proposed that importers and domestic manufacturers of EPSs that are exempt under the Service Parts Act would be required to report annually to DOE the total number of exempt EPS units that were sold during the most recent 12-calendar-month period ending on July 31 that do not meet the 2016 standards. 80 FR at 71986. DOE received no comments specifically with regard to the use of the word "sold" as opposed to "shipped" in this context, and will use the word "sold" in its reporting requirement, as proposed in the NOPR.

DOE explained in the NOPR that many of the EPSs sold as spare and service parts are Class A EPSs and they continue to be subject to the current Class A EPS standards (*i.e.* Level IV) set forth in 10 CFR 430.32(w)(1)(i). As such, manufacturers of any basic model of a Class A EPS must already submit an annual certification report to DOE. See 10 CFR 429.12. Moreover, the Service Parts Act requires that an EPS must be certified to DOE as meeting Level IV standards in order to qualify for the exemption. Therefore, DOE proposed that each manufacturer of exempt Class A EPSs include in its annual report certifying compliance with Level IV standards the number of units of each individual model of such EPS it sold in the preceding year that do not meet the Level VI standards.

Similarly, DOE proposed to require each importer or domestic manufacturer of non-Class A EPSs that are exempted by the Service Parts Act and do not meet the 2016 standards to submit an annual report of the corresponding number of units of each individual model of such EPS that the importer or domestic manufacturer sold in the prior year. These non-Class A EPSs include multiple-voltage EPSs, high-power EPSs, and some EPSs used to operate end-use products that are motor-driven. Under DOE's February 2014 final rule, non-Class A EPSs, unless exempt, are required to meet the Level VI standards starting in 2016. These non-class A EPSs would not be certified under the provisions of 10 CFR 429.12 (General requirements applicable to certification reports), if they are exempt, but under DOE's proposal, manufacturers of these EPSs would be required to submit a report including the number of exempt EPSs sold.

Separately, the Service Parts Act authorizes DOE to limit the applicability of the service and spare part exemption if DOE determines that the exemption is resulting in a significant reduction of the energy savings that would otherwise result from the final rule. See 42 U.S.C. 6295(u)(5)(A)(iii). Having information regarding the number of exempt units sold would aid DOE in making this determination.

ASAP, *et al.* noted that reporting is vital to DOE's ability to assess the impact of the EPS Service Parts Act of 2014 on the energy savings projected by the 2014 standards and supported DOE's proposal to extend the reporting requirements to non-Class A EPSs that are subject to federal efficiency standards. (ASAP, *et al.*, No. 2 at p.3) The CA IOUs also supported DOE's proposals, noting that ensuring applicable EPS units that are subject to current efficiency requirements continue to meet these standards would prevent potential backsliding and an accompanying loss of energy savings. The CA IOUs also strongly supported having domestic manufacturers and importers report to DOE the total number of exempt EPS units sold on an annual basis to help ensure that energy savings from the 2014 standards are realized. (CA IOUs, No. 5 at p.2)

AHAM, *et al.*, however, expressed concern over DOE's reporting requirement proposals. AHAM, *et al.* noted that most companies have low shipment volumes of spare and service parts for products manufactured prior to the compliance date and that the cost of reporting these data would outweigh the data collection efforts on a per model basis. Alternatively, AHAM, *et al.* recommended that DOE modify its reporting requirements to simplify the requirements to one report per manufacturer rather than one report per model and only require a report submission if the quantity of service and spare part EPSs exceeds 1,000 units. (AHAM, *et al.*, No. 3 at p.2) AHAM, *et al.* concluded by stating its belief that the reporting requirements proposed by DOE exceed the authority granted by the EPS Service Parts Act of 2014 and recommended that the reporting requirements be limited to unit shipment volumes as permitted under the Service Parts Act. (AHAM, *et al.*, No. 3 at p.3)

Reporting requirements in this instance serve a variety of important and useful roles, among which include helping DOE assess the impacts of the Service Parts Act's exemption on overall national energy savings. Notwithstanding this fact, DOE recognizes that reporting requirements may create a burden and has modified its proposal from the NOPR to allow manufacturers or domestic importers to report the total annual number of exempt EPSs sold as spare or service parts rather than requiring individual reporting on a per model basis, as suggested by AHAM. Under DOE's revised reporting methodology, manufacturers or importers would only need to track and report the total number of exempt EPSs sold.

DOE also recognizes the reporting burdens for manufacturers that sell only a small number of exempt units. Accordingly, consistent with the authority provided to DOE by the Service Parts Act, DOE will adopt AHAM's suggestion and relieve manufacturers from the sales reporting requirements contained in this final rule provided that the quantity of exempt service and spare part EPSs sold by that manufacturer does not exceed 1,000 units annually. This 1,000 unit threshold will apply to the total number of exempt EPSs sold annually by that manufacturer (including importers) in aggregate and not on a per model basis. Consequently, a manufacturer would not be exempt from the reporting requirements if it sells more than one exempt model of EPS, each of which it sells less than 1,000 of annually, but, in aggregate, the total number of exempt EPSs sold by that manufacturer exceeds 1,000 across all models. DOE is modifying the regulatory text in the CFR to reflect this approach.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget ("OMB") has determined that certification rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs ("OIRA") in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis ("IFRA") for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

For manufacturers of EPSs, the Small Business Administration ("SBA") has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System ("NAICS") code and industry description and are available at *http://*

www.sba.gov/content/summary-size-standards-industry. EPS manufacturing is classified under NAICS 335999, "All Other Miscellaneous Electrical Equipment and Component Manufacturing." The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category. As a preliminary matter, DOE notes that there are no domestic manufacturers of EPSs. Consequently, there are no small business impacts to evaluate for purposes of the Regulatory Flexibility Act.

Notwithstanding the absence of domestic EPS manufacturers, DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule would incorporate into DOE's regulations a statutorily-prescribed exemption affecting EPSs that manufacturers make available as service or spare parts. The exemption allows manufacturers to maintain and distribute supplies of replacement parts for older equipment without needing to meet the EPS energy conservation standards that have applied since February 10, 2016. This exemption provides manufacturers with flexibility in meeting their warranty and contract obligations in cases where service or spare parts require an EPS. It also relieves manufacturers of the burdens of redesigning and certifying EPSs used for end-use products that are no longer manufactured, which DOE anticipates will save these manufacturers from any significant expenses that would otherwise be used solely to support products that are no longer in production. As for the reporting requirements, DOE is, consistent with comments received from industry participants, adopting an approach that requires only manufacturers who sell 1,000 or more exempt EPSs to report its shipped units—an amount that will considerably lessen any small business-related impacts.

Consistent with its prior incorporation of the previous statutory exemption added by Congress for Class A EPSs made available as service and spare parts, see 10 CFR 430.32(w)(2) (2015), DOE expects any potential impact from its requirement to be minimal. For these reasons, DOE certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rule revises an existing information collection. This information collection request contains:

(1) *OMB Control Number:* 1910–1400.

(2) *Information Collection Request Title:* Certification Reports, Compliance Statements, Application for a Test Procedure Waiver, and Recordkeeping for Consumer Products and Commercial/Industrial Equipment Subject to Energy or Water Conservation Standards.

(3) *Type of Request:* Revision of a Currently Approved Collection.

(4) *Purpose:* This notice will require external power supply manufacturers to report the number of exempt EPS units sold as part of the annual certification report, which is already required. The annual certification report must be submitted via CCMS, an electronic system for recording and processing certification submissions.

Manufacturers of EPSs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for EPSs including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including external power supplies. See 10 CFR part 429, subpart B. The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). This requirement has been approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the proposed certification requirement is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In this final rule, DOE is finalizing requirements for external power supply manufacturers to provide the total number of exempt EPS units sold as service and spare parts for which the manufacturer is claiming exemption from the current standards. The following are DOE's estimates, revised from the value originally proposed in the NOPR, of the time for manufacturers to collect, organize and store the data required by this final rule. As part of this final rule, manufacturers will not be required to provide the total number of exempt EPS units sold for each basic model, and instead will only provide the total number of exempt EPSs sold by that manufacturer. Additionally, manufacturers who sell under 1,000 exempt EPSs will be exempt from reporting requirements. Accordingly, DOE anticipates the impact in burden hours will be reduced from the estimates provided in the NOPR. DOE has increased the cost estimate for the NOPR to a fully burdened labor rate of $100 per hour, consistent with other certification requirements, to account for any skilled labor that may be required. DOE has revised its burden estimates to be consistent with the amendments being adopted in this final rule for reporting. DOE is showing the burden estimates for the individual amendments being adopted today and for the information collection as a whole.

Affected Public with respect to this final rule: Manufacturers of external power supplies that are claiming the spare parts exemption.

Estimated Number of Impacted Manufacturers: 228.

Estimated Time per Record: 4 minutes.

Estimated Total Annual Burden Hours: 15.2 hours.

Estimated Total Annual Cost to Manufacturers: $1520.

After adding the values for this final rule to the existing information collection requirements, the following totals reflect the information collection as a whole:

(5) *Annual Estimated Number of Respondents:* 2000.

(6) *Annual Estimated Number of Total Responses:* 20,000.

(7) *Annual Estimated Number of Burden Hours:* 68,015.2 hours.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $6,801,520.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this final rule, which would incorporate a recently-enacted exemption into the CFR for EPSs sold as spare or service parts, falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et* *seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule would adopt changes to the manner in which certain covered equipment would be certified and/or reported, which would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 (Procedural Rulemaking) under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the existing certification requirements for EPSs sold as spare parts is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Public Law 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission ("FTC") concerning the impact of the commercial or industry standards on competition. This proposal to amend the certification requirements for all covered consumer products does not propose the use of any commercial standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on May 6, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.37 is amended by adding paragraphs (b)(3) and (c) to read as follows:

§ 429.37 External power supplies.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report for external power supplies that are exempt from the energy conservation standards at § 430.32(w)(1)(ii) pursuant to § 430.32(w)(2) of this chapter must include the following additional information if, in aggregate, the total number of exempt EPSs sold as spare and service parts by the certifier exceeds 1,000 units across all models: The total number of units of exempt external power supplies sold during the most recent 12-calendar-month period ending on July 31, starting with the annual report due on September 1, 2017.

(c) *Exempt external power supplies.* (1) For external power supplies that are exempt from energy conservation standards pursuant to § 430.32(w)(2) of this chapter and are not required to be certified pursuant to § 429.12(a) as compliant with an applicable standard, the importer or domestic manufacturer must, no later than September 1, 2017, and annually by each September 1st thereafter, submit a report providing the following information if, in aggregate, the total number of exempt EPSs sold as spare and service parts by the importer or manufacturer exceeds 1,000 units across all models:

(i) The importer or domestic manufacturer's name and address;

(ii) The brand name; and

(iii) The number of units sold during the most recent 12-calendar-month period ending on July 31.

(2) The report must be submitted to DOE in accordance with the submission procedures set forth in § 429.12(h).

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.32 is amended by revising paragraph (w)(2) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(w) * * *

(2) A basic model of external power supply is not subject to the energy conservation standards of paragraph (w)(1)(ii) of this section if the external power supply—

(i) Is manufactured during the period beginning on February 10, 2016, and ending on February 10, 2020;

(ii) Is marked in accordance with the External Power Supply International Efficiency Marking Protocol, as in effect on February 10, 2016;

(iii) Meets, where applicable, the standards under paragraph (w)(1)(i) of this section, and has been certified to the Secretary as meeting those standards; and

(iv) Is made available by the manufacturer only as a service part or a spare part for an end-use product that—

(A) Constitutes the primary load; and

(B) Was manufactured before February 10, 2016.

* * * * *

[FR Doc. 2016–11469 Filed 5–13–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2016–6567; Special Conditions No. 23–274–SC]

Special Conditions: Cessna Aircraft Company, Models 208 and 208B, Caravan Airplanes; As Modified by Peregrine; Installation of Rechargeable Lithium Battery

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, Models 208 and 208B Caravan airplanes. This airplane, as modified by Peregrine, will have a novel or unusual design feature associated with the use of a replacement option of a lithium battery instead of nickel-cadmium (Ni-Cd) and lead-acid rechargeable batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 16, 2016. We must receive your comments by June 15, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–6567 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ruth Hirt, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, ACE–114, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4108, facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

The FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Special condition number	Company/airplane model
23–269–SC[1] ..	Honda Aircraft Company Model HA–420.
23–236–SC[2] ..	Cessna Aircraft Company Model 525C (CJ4).
23–249–SC[3] ..	Cessna Aircraft Company Model 525 Citation.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On March 25, 2015, Peregrine applied for a supplemental type certificate (STC) to install a rechargeable lithium battery on the Cessna Models 208 and 208B Caravan airplanes. Both the 208 and 208B are normal category airplanes, powered by a single-turbine engine that drives an aircraft propeller, with passenger seating up to eleven (11) and a maximum takeoff weight of 8,000 and 8,750 pounds respectively.

The current regulatory requirements for part 23 airplanes do not contain adequate requirements for the application of rechargeable lithium batteries in airborne applications. This type of battery possesses certain failure and operational characteristics with maintenance requirements that differ significantly from that of the Ni-Cd and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes. Therefore, the FAA is proposing this special condition to address (1) all characteristics of the rechargeable lithium batteries and their installation that could affect safe operation of the modified 208 and 208B airplanes, and (2) appropriate Instructions for Continued Airworthiness (ICAW) that include maintenance requirements to ensure the availability of electrical power from the batteries when needed.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (CFR) 21.101, Peregrine must show that the 208 and 208B airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A37CE, or the applicable regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the 208 and 208B airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/673E1A183F208FF186257EC90042DD79?OpenDocument&Highlight=lithium%20ion%20battery%20installation.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/83608DAA4B3E5D7A8625761D004EDE7B?OpenDocument&Highlight=lithium%20ion%20battery%20installation.*

[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/BBFDE3920E2AFB1D862577700046E311?OpenDocument&Highlight=lithium%20ion%20battery%20installation.*

In addition to the applicable airworthiness regulations and special conditions, the 208 and 208B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for an STC to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Cessna Models 208 and 208B airplanes will incorporate the following novel or unusual design features:

The installation of a rechargeable lithium battery as a main or engine start aircraft battery.

Discussion

The applicable part 23 airworthiness regulations governing the installation of batteries in general aviation airplanes, including § 23.1353, were derived from Civil Air Regulations (CAR) 3 as part of the recodification that established 14 CFR part 23. The battery requirements, which are identified in § 23.1353, were a rewording of the CAR requirements that did not add any substantive technical requirements. An increase in incidents involving battery fires and failures that accompanied the increased use of Ni-Cd batteries in aircraft resulted in rulemaking activities on the battery requirements for transport category airplanes. These regulations were incorporated into § 23.1353(f) and (g), which apply only to Ni-Cd battery installations.

The introduction of lithium batteries into aircraft raises some concern about associated battery or cell monitoring systems and the impact to the electrical system when monitoring components fail. Associated battery or cell monitoring systems (*e.g.*, temperature, state of charge, etc.) should be evaluated with respect the expected extremes in the aircraft operating environment.

Lithium batteries typically have different electrical impedance characteristics than Ni-Cd or lead-acid batteries. Peregrine needs to evaluate other components of the aircraft electrical system with respect to these characteristics.

Presently, there is limited experience with use of rechargeable lithium batteries and rechargeable lithium battery systems in applications involving commercial aviation. However, other users of this technology, ranging from personal computers, wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with rechargeable lithium batteries. These problems include overcharging, over-discharging, flammability of cell components, cell internal defects, and during exposure to extreme temperatures that are described in the following paragraphs.

1. Overcharging: In general, rechargeable lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*e.g.*, thermal runaway) than their Ni-Cd or lead-acid counterparts. This is especially true for overcharging which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-discharging: Discharge of some types of rechargeable lithium battery cells beyond the manufacturer's recommended specification can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with Ni-Cd batteries. In addition, over-discharging has the potential to lead to an unsafe condition (creation of dendrites that could result in internal short circuit during the recharging cycle).

3. Flammability of Cell Components: Unlike Ni-Cd and lead-acid batteries, some types of rechargeable lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

4. Cell Internal Defects: The rechargeable lithium batteries and rechargeable battery systems have a history of undetected cell internal defects. These defects may or may not be detected during normal operational evaluation, test and validation. This may lead to an unsafe condition during in service operation.

5. Extreme Temperatures: Exposure to an extreme temperature environment has the potential to create major hazards. Care must be taken to ensure that the lithium battery remains within the manufacturer's recommended specification.

These problems experienced by users of lithium batteries raise concern about the use of lithium batteries in aviation. The intent of the proposed special condition is to establish appropriate airworthiness standards for lithium battery installations in the 208 and 208B airplanes and to ensure, as required by §§ 23.1309 and 23.601, that these battery installations are not hazardous or unreliable.

Applicability

The special conditions are applicable to the 208 and 208B airplanes. Should Peregrine apply at a later date for an STC to modify any other model included on Type Certificate No. A37CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the 208 and 208B airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the subject contained herein. Therefore, notice and opportunity for prior public comment hereon are unnecessary and the FAA finds good cause, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), making these special conditions effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Aircraft Company, 208 and 208B Caravan airplanes modified by Peregrine.

1. Installation of Lithium Battery

The FAA states in this Notice that the following special conditions be applied to lithium battery installations on the 208 and 208B airplanes in lieu of the requirements § 23.1353(a)(b)(c)(d)(e), amendment 49.

Lithium battery installations on the 208 and 208B airplanes must be designed and installed as follows:

a. Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition, or during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium battery installation must be designed to preclude explosion or fire in the event of those failures.

b. Lithium batteries must be designed to preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

c. No explosive or toxic gasses emitted by any lithium battery in normal operation or as the result of any failure of the battery charging or monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

d. Lithium batteries that contain flammable fluids must comply with the flammable fluid fire protection requirements of 14 CFR 23.863(a) through (d).

e. No corrosive fluids or gases that may escape from any lithium battery may damage airplane structure or essential equipment.

f. Each lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

g. Lithium battery installations must have—

(1) A system to control the charging rate of the battery automatically to prevent battery overheating or overcharging, or

(2) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition or,

(3) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

h. Any lithium battery installation functionally required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers, whenever the capacity and state of charge of the batteries have fallen below levels considered acceptable for dispatch of the airplane.

i. The ICAW must contain recommended manufacturer's maintenance and inspection requirements to ensure that batteries, including single cells, meet a functionally safe level essential to the aircraft's continued airworthiness.

(1) The ICAW must contain operating instructions and equipment limitations in an installation maintenance manual.

(2) The ICAW must contain installation procedures and limitations in a maintenance manual, sufficient to ensure that cells or batteries, when installed according to the installation procedures, still meet safety functional levels essential to the aircraft's continued airworthiness. The limitations must identify any unique aspects of the installation.

(3) The ICAW must contain corrective maintenance procedures to check battery capacity at manufacturer's recommended inspection intervals.

(4) The ICAW must contain scheduled servicing information to replace batteries at manufacturer's recommended replacement time.

(5) The ICAW must contain maintenance and inspection requirements how to check visually for battery and charger degradation.

j. Batteries in a rotating stock (spares) that have degraded charge retention capability or other damage due to prolonged storage must be checked at manufacturer's recommended inspection intervals.

k. If the lithium battery application contains software and/or complex hardware, in accordance with AC 20–115[1] and AC 20–152,[2] they should be developed to the standards of DO–178 for software and DO–254 for complex hardware.

Compliance with the requirements of this Special Condition must be shown by test or analysis, with the concurrence of the Wichita Aircraft Certification Office.

Issued in Kansas City, Missouri on May 9, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11502 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2462; Directorate Identifier 2014–NM–224–AD; Amendment 39–18515; AD 2016–10–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of cracked antenna support channels, skin cracking underneath the number 2 very high frequency (VHF) antenna, and cracking in the frames attached to the internal support structure. This AD requires repetitive inspections to determine the condition of the skin and the internal support structure, and follow-on actions including corrective action as necessary. We are issuing this AD to detect and correct skin cracking of the fuselage. Such cracking could result in separation of the number 2 VHF antenna from the airplane and rapid depressurization of the cabin.

DATES: This AD is effective June 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 20, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2462.

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[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/E35FBC0060E2159186257BBE00719FB3?OpenDocument&Highlight=ac%2020-115b.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/6D4AE0BF1BDE3579862570360055D119?OpenDocument&Highlight=ac%2020-152.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2462; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on July 20, 2015 (80 FR 42756) (“the NPRM”). The NPRM was prompted by reports of cracked antenna support channels, skin cracking underneath the number 2 VHF antenna, and cracking in the frames attached to the internal support structure. The NPRM proposed to require repetitive inspections to determine the condition of the skin and the internal support structure, and follow-on actions including corrective action as necessary. We are issuing this AD to detect and correct skin cracking of the fuselage. Such cracking could result in separation of the number 2 VHF antenna from the airplane and rapid depressurization of the cabin.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment. Boeing concurred with the NPRM.

Request To Correct a Typographical Error in Paragraph (h)(4) of the Proposed AD

Southwest Airlines requested that we correct a typographical error in paragraph (h)(4) of the proposed AD, which states that accomplishment of the preventative modification terminates the inspection required by “paragraphs (g), (g)(1), and (h)(2) of the AD.” Southwest Airlines noted that the NPRM does not contain paragraph (g)(1). Southwest Airlines concluded that this appears to be a typographical error and the references to paragraphs (g) and (g)(1) of the proposed AD should be to paragraphs (h) and (h)(1) of the proposed AD, similar to what is stated in paragraph (k)(3) of the proposed AD.

British Airways stated that it has identified a potential contradiction between paragraphs (h)(4) and (k)(3) of the proposed AD. British Airways stated that paragraph (h)(4) of the proposed AD refers to paragraph (h)(2), whereas paragraph (k)(3) of the proposed AD refers to paragraphs (h), (h)(1), and (h)(2) of the proposed AD.

We agree to revise paragraph (h)(4) of this AD because there is a typographical error. We have changed the references in paragraph (h)(4) of this AD to specify paragraphs (h), (h)(1), and (h)(2) of this AD. This change resolves the contradiction noted by British Airways.

Request a Provision To Terminate Inspections Required by Paragraph (h) of the Proposed AD

Southwest Airlines requested that we provide a provision to terminate the inspections required by paragraph (h) of the proposed AD for previously installed repairs that have received FAA approval. The commenter stated that these repairs would inhibit the inspections required by paragraph (h) of this AD.

We do not agree with the commenter's request because previously installed FAA-approved repairs may not have been designed to address the specified unsafe condition identified in this AD. We understand that some of these repairs may not allow inspection of the area specified in the AD; in those cases, the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m) of this AD. We have not revised this AD in this regard.

Request To Add Terminating Action to Paragraphs (h)(1) and (h)(2) of the Proposed AD

British Airways asked why the terminating action specified in paragraph (k)(3) of the proposed AD is not included in the text “until the accomplishment of paragraphs” references in paragraphs (h)(1) and (h)(2) of the proposed AD. We infer British Airways is requesting that we revise paragraphs (h)(1) and (h)(2) of the proposed AD.

We agree with the commenter because installation of the preventive modification in accordance with paragraph (k)(3) of this AD is acceptable for terminating the repetitive inspections. In addition, we note the reference to paragraph (k)(1) of this AD in paragraph (h)(2) of this AD is redundant. We have made the following changes to this AD:

- In paragraph (h)(1) of this AD, we specify to repeat the inspections “until the accomplishment of paragraph (k)(1), (k)(2), or (k)(3) of this AD, as applicable.”
- In paragraph (h)(2) of this AD, we specify to repeat the inspections “until the accomplishment of paragraph (k)(2) or (k)(3) of this AD, as applicable.”

Request To Correct the Language in Paragraph (h)(2) of the Proposed AD

Southwest Airlines requested a correction to the language in paragraph (h)(2) of the proposed AD to add the term “as applicable” after the listed inspections. Southwest Airlines stated that there are multiple sections of Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014. Southwest Airlines noted that each group/configuration has its own Part 2 instructions and that Groups 3 through 6, Configurations 2 and 3, do not contain instructions for internal detailed inspections or internal high frequency eddy current inspections.

We agree with the commenter because certain inspections are applicable to only certain configurations. We have added the language “as applicable” to paragraph (h)(2) of this AD.

Request To Revise Certain Paragraphs To Include a Terminating Action for the Preventive Modification

Southwest Airlines requested that we revise paragraph (k)(2) of the proposed AD to include a statement that accomplishment of the repair specified in paragraph (h)(3) of the proposed AD also terminates the preventive modification specified in paragraph (h)(4) of the proposed AD. Southwest Airlines stated that there is no language in the NPRM or Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, that states whether the preventative modification is required after the repair is installed.

We do not agree with the commenter's request because, for some airplane configurations, the repair only installs an external skin doubler and the preventative modification includes replacement of the internal support structure. For some airplane configurations, the preventive modification specified in Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, is required after installation of the repair specified in Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014. We have not revised this AD in this regard.

Request To Provide Statement for Terminating Actions in Paragraph (k)(2) of the Proposed AD

Southwest Airlines requested that we revise paragraph (k)(2) of the proposed AD to specify the repair also terminates the initial inspections in paragraph (h) of the proposed AD. Southwest Airlines stated that the current statement in paragraph (k)(2) of the proposed AD does not address a terminating action for the initial inspection specified in paragraphs (h)(1) and (h)(2) of the proposed AD for aircraft that have previously installed the repair specified in paragraph (h)(3) of the proposed AD.

We agree with the commenter's request because repairs installed in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, prior to the effective date of this AD, will not allow accomplishment of the initial inspections as specified in paragraph (h) of this AD. We revised paragraph (k)(2) of this AD to specify that accomplishment of the repair required by paragraph (h)(3) of this AD terminates the initial and repetitive inspections required in paragraphs (h), (h)(1), and (h)(2) of this AD.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/be866b732f6cf31086257b9700692796/$FILE/ST01219SE.pdf*) does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added new paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Change to Paragraph (j) of This AD

We have revised paragraph (j) of this AD to clarify that the post-repair and post-modification inspections are airworthiness limitations that are required by maintenance and operational rules; therefore, these inspections are not required by this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014. The service information describes procedures for repetitive inspections to determine the condition of the skin and the internal support structure, and follow-on actions including corrective action as necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 609 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	33 work-hours × $85 per hour = $2,805 per inspection cycle.	$0	$2,805 per inspection cycle	$1,708,245 per inspection cycle.

We estimate the following costs to do any necessary repairs/modifications that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these repairs/modifications.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair and preventive modification	63 work-hours × $85 per hour = $5,355	$10,432	$15,787

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–04 The Boeing Company: Amendment 39–18515; Docket No. FAA–2015–2462; Directorate Identifier 2014–NM–224–AD.

(a) Effective Date

This AD is effective June 20, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/be866b732f6cf31086257b9700692796/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracked antenna support channels, skin cracking underneath the number 2 VHF antenna, and cracking in the frames attached to the internal support structure. We are issuing this AD to detect and correct skin cracking of the fuselage. Such cracking could result in separation of the number 2 VHF antenna from the airplane and rapid depressurization of the cabin.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Follow-On Actions: Group 1

For airplanes identified as Group 1 in Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014: Within 120 days after the effective date of this AD, inspect for cracking at the number 2 VHF antenna location, and do all applicable follow-on actions, using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(h) Inspection and Follow-On Actions: Groups 2 Through 6, Configurations 1 Through 3

For airplanes identified as Groups 2 through 6, Configurations 1 through 3 in Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014: Within 1,250 flight cycles after the effective date of this AD, do an external detailed inspection for cracking of the fuselage skin, as applicable, and do all applicable corrective actions, in accordance with Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014. Thereafter, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, except as required by paragraph (l)(1) of this AD: Do all applicable actions specified in paragraphs (h)(1) through (h)(4) of this AD.

(1) Repeat the Part 1 inspections specified in paragraph (h) of this AD until the accomplishment of paragraph (k)(1), (k)(2), or (k)(3) of this AD, as applicable.

(2) Inspect for cracking at the number 2 VHF antenna location using internal and external detailed inspections, internal and external high frequency eddy current (HFEC) inspections, and an HFEC open-hole inspection, as applicable, in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014. Repeat the inspections until the accomplishment of paragraph (k)(2) or (k)(3) of this AD, as applicable.

(3) Repair any crack found, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, except as required by paragraph (l)(2) of this AD.

(4) Do a preventive modification, in accordance with Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, except as specified in paragraph (l)(2) of this AD. The accomplishment of this preventive modification terminates the inspections required by paragraphs (h), (h)(1), and (h)(2) of this AD.

(i) Inspection and Follow-On Actions: Groups 3 Through 6, Configuration 4

For airplanes identified as Groups 3 through 6, Configuration 4, in Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014: At the applicable time specified in table 10 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, except as required by paragraph (l)(1) of this AD, do an external detailed inspection for cracking at the outer row of fasteners common to the internal repair doubler, and do an internal general visual inspection for cracking on the modified internal support structure of the number 2 VHF antenna, skin, and surrounding stringers, channel, and frames, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014.

(1) If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) If no cracking is found, repeat the inspections at the time specified in table 10 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014.

(j) Post Repair/Post Modification Inspections

Tables 7 through 9 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, specify post-repair and post-modification airworthiness limitation inspections in compliance with 14 CFR 25.571(a)(3) at the repaired and modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an alternative method of compliance.

(k) Terminating Action Provisions

The following describes terminating action for the airplane groups and configurations, as identified in Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014.

(1) For airplanes in Group 2, Configuration 2; and Groups 3 through 6, Configuration 2: Accomplishment of the inspections specified in paragraph (h)(2) of this AD terminates the repetitive inspection requirements of paragraph (h)(1) of this AD.

(2) For airplanes in Group 2, Configuration 1; and Groups 3 through 6, Configurations 1, 2, and 3: Accomplishment of the repair specified in paragraph (h)(3) of this AD terminates the initial and repetitive inspections specified in paragraphs (h), (h)(1), and (h)(2) of this AD.

(3) For airplanes in Group 2, Configuration 1; and Groups 3 through 6, Configurations 1 and 3: Accomplishment of the preventive modification specified in paragraph (h)(4) of this AD terminates the initial and repetitive inspections specified in paragraphs (h), (h)(1), and (h)(2) of this AD.

(l) Exception to Service Bulletin Specifications

(1) Where Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, specifies a compliance time "after the Revision 1 date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014, specifies to contact Boeing for appropriate action, and specifies that action as "RC" (Required for Compliance): Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-REQUESTS@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (l)(2) of this AD, for service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(4)(i) and (m)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(n) Related Information

For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov.*

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 737–53–1159, Revision 1, dated October 20, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11200 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3141; Directorate Identifier 2014–NM–242–AD; Amendment 39–18516; AD 2016–10–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 757 airplanes. This AD was prompted by a report of cracking in the fuselage frame. This AD requires inspections for cracking in the fuselage frame, left and right sides, and repair if necessary. We are issuing this AD to detect and correct fuselage frame fatigue cracking. Such cracking could result in loss of structural integrity and the inability to sustain loading conditions.

DATES: This AD is effective June 20, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 20, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3141.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3141; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5233; fax: 562–627–5210; email: *roger.durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 757 airplanes. The NPRM published in the **Federal Register** on August 19, 2015 (80 FR 50230) ("the NPRM"). The NPRM was prompted by reports of cracking in the fuselage frame at Station (STA) 1440, stringer 24L. The NPRM proposed to require inspections for cracking in the fuselage frame, left and right sides, and repair if necessary. We are issuing this AD to detect and correct fuselage frame fatigue cracking. Such cracking could result in loss of structural integrity and the inability to sustain loading conditions.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Paragraph (g) for Clarity and Consistency

Boeing requested that we revise paragraph (g) of the proposed AD to change it from "frames at stringer 24 and stringer 25, left and right sides," to state, "frames in Section 43 at stringer 25, left and right sides, and frames in Section 46 at stringer 24, left and right sides."

We agree with the comment as it adds clarity and makes the AD consistent with the required Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014. We have revised the introductory text to paragraph (g) of this AD accordingly.

Request To Revise Paragraph (g)(1) To Make Exceptions for Repaired Areas

Boeing requested that we revise paragraph (g)(1) of the proposed AD from "repeat the inspections at intervals not to exceed 12,000 flight cycles," to state, "repeat the inspections of frame areas at intervals not to exceed 12,000 flight cycles in areas that have not been repaired as a result of this service bulletin."

We disagree with the commenter's proposal to make exceptions for areas repaired using the procedures described in the service bulletin, where we assume that the commenter is referring to Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014. We have not received repair data for cracks detected as a result of the inspections required by this AD, and therefore cannot make a determination that any such repair is terminating action for the required inspections. We will consider requests for alternative methods of compliance (AMOCs) with supporting repair data, which may include termination of the required inspections, or alternate inspection intervals and methods, as required, to address the unsafe condition.

Request To Delay AD for Service Bulletin Revision

United Airlines and United Parcel Service requested to delay the AD until approved repair information could be included in a revision of Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014. One commenter noted that its cargo operations often required frame repairs and the lack of approved repair configurations would require unnecessary AMOC requests.

We do not agree to delay issuance of this final rule for a revision to Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014, to include repair data. Including the repair data will only delay necessary inspections required to address the unsafe condition. The number of positive findings requiring repairs is unknown at this time, and therefore the value of delaying the AD for approved repair data is unknown. It is not possible to address existing repairs which may require an AMOC. The various repair configurations and locations are unknown and therefore cannot be addressed at this time. If the required inspections result in a significant number of repairs, operators and/or the original equipment manufacturer can request a global AMOC for repair data using the procedures in paragraph (i) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014. The service information describes procedures for detailed and high frequency eddy current (HFEC) inspections for cracking in the fuselage frame at stringer 24 and stringer 25, left and right sides. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 652 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED OSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	68 to 83 work-hours × $85 per hour = Up to $7,055 per inspection cycle.	$0	Up to $7,055 per inspection cycle	Up to $4,599,860 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–05 The Boeing Company: Amendment 39–18516 ; Docket No. FAA–2015–3151; Directorate Identifier 2014–NM–242–AD.

(a) Effective Date

This AD is effective June 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, -200CB, -200PF, and -300 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracking in the fuselage frame at Station (STA) 1440, stringer 24L. We are issuing this AD to detect and correct fuselage frame fatigue cracking. Such cracking could result in loss of structural integrity and the inability to sustain loading conditions.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014, except as required by paragraph (h) of this AD, do detailed and high frequency eddy current inspections for cracking in the fuselage frames in Section 43 at stringer 25, left and right sides, and frames in Section 46 at stringer 24, left and right sides, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014.

(1) If cracking is not found, repeat the inspections at intervals not to exceed 12,000 flight cycles.

(2) If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Repeat the inspections at intervals not to exceed 12,000 flight cycles in unrepaired areas.

(h) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014, specifies a compliance time "after the Original Issue date of this Service Bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5233; fax: 562–627–5210; email: *roger.durbin@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 757–53A0099, dated September 18, 2014.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11197 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 367

RIN 3220–AB66

Recovery of Debts Owed to the United States Government by Administrative Offset

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations by changing from 180 days delinquent to 120 days delinquent debts that are referred to Treasury in compliance with the DATA Act.

DATES: This rule will be effective May 16, 2016.

ADDRESSES: Martha P. Rico, Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) amends part 367 of the Board's regulations, Recovery of Debts Owed to the United States Government by Administrative Offset. Specifically, the Board amends section 367.3(a), Board Responsibilities. Section 367.3(a) states that all nontax debts over 180 days delinquent shall be referred to the Department of the Treasury for administrative offset through the Treasury Offset Program as required by 31 U.S.C. 3716. 31 U.S.C. 3716 was amended by the Digital Accountability and Transparency Act (DATA Act), Public Law 113–101. The DATA Act now requires agencies to refer to the Department of the Treasury valid, delinquent nontax debts for the purpose of administrative offset at 120 days. The amendment to section 367.3(a) of the Board's regulation changes from 180 days to 120 days the debts referred to the Department of the Treasury in compliance with the DATA Act.

A proposed rule was published in the **Federal Register** on January 21, 2015, and comments were invited (80 FR 2839). No comments were received. The final rule makes no changes from the proposed rule.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as amended. Therefore, no regulatory impact analysis is required. There are no changes to the information collections associated with Part 367.

List of Subjects in 20 CFR Part 367

Debts, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, subchapter F, part 367 of the Code of Federal Regulations as follows:

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

■ 1. The authority citation for part 367 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716

§ 367.3 [Amended]

■ 2. Amend § 367.3 by removing "180" and adding in its place "120" where it appears in paragraph (a).

Dated: May 11, 2016.

By Authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2016–11445 Filed 5–13–16; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[167A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF28

Title Evidence for Trust Land Acquisitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule deletes the requirement for fee-to-trust applicants to furnish title evidence that meets the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the U.S. Department of Justice (DOJ), and replaces the requirement with a more targeted requirement for title evidence, because adherence to the DOJ standards is not required for acquisitions of land in trust for individual Indians or Indian tribes.

DATES: This rule becomes effective on May 16, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273–4680, *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview of Rule
II. Background
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I. Overview of Rule

This rule replaces the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by DOJ (DOJ standards) with a more targeted title evidence standard. Under the new standard, applicants must furnish a deed evidencing that the applicant has ownership, or a written sales contract or written statement from the transferor that the applicant will have ownership. Applicants must also submit either (1) a current title insurance commitment; or (2) the policy of title insurance issued at the time of the applicant's or current owner's acquisition of the interest and an abstract dating from the time the interest was acquired. This rule does not preclude applicants from having title confirmed pursuant to all requirements of DOJ standards (as those standards apply in the land-into-trust context) if the applicant so chooses.

The rule continues the current requirement that title evidence must be submitted and reviewed by the Department of the Interior (Department) before title is transferred. The rule continues to provide that the Secretary has discretion to require the elimination of any liens, encumbrances, or infirmities prior to acceptance in trust. The rule also continues the practice of requiring the elimination of any legal claims, including but not limited to liens, mortgages, and taxes, determined by the Secretary to make title unmarketable, prior to acceptance in trust.

II. Background

Section 5 of the Indian Reorganization Act (IRA) is the primary authority providing the Secretary of the Interior (Secretary) with discretion to acquire land in trust for individual Indians or Indian tribes. *See* 25 U.S.C. 465. Congress has also enacted other statutes that authorize the discretionary acquisition of lands for specific tribes. The Department's regulations at 25 CFR part 151 establish the process for discretionary trust acquisitions pursuant to section 465 and other statutory authority. Section 151.13 of the regulations published in 1980 required the applicant to furnish title evidence meeting the DOJ standards if the Secretary determines to approve a fee-to-trust application.

On March 1, 2016, BIA published an interim final rule deleting the requirement for the applicant to furnish title evidence meeting DOJ standards because those standards are not required for acquisitions of land in trust for individual Indians or Indian tribes. *See* 81 FR 10477. On April 15, 2016, BIA delayed the effective date of the rule to May 16, 2016 to allow BIA time to publish technical revisions. *See* 81 FR 22183. This rule provides those technical revisions.

III. Comments on the Interim Final Rule

The BIA received 13 comments in response to the interim final rule, most asking questions seeking clarification of the regulatory text. Several commenters supported the rule, but requested clarification. Commenters who opposed the rule stated that the current DOJ standards are necessary to protect the public, including adjoining landowners and other third parties, and protect against conflicts of interest, and that DOJ standards are more reliable and less costly.

After careful consideration of the comments and applying its own experience in reviewing fee-to-trust applications and title evidence, BIA has determined that the final rule provides sufficient standards to protect the United States. The purpose of title evidence requirements is to ensure that the Tribe has marketable title to convey to the United States, thereby protecting the United States. *See Crest-Dehesa-Granite Hills-Harbison Canyon Subregional Planning Group* v. *Acting Pacific Regional Director,* 61 IBIA 208, 216 (2015). The rule revisions allow for a less costly alternative to providing a title insurance policy under DOJ standards, while still ensuring sufficient evidence of good title. The following are summaries of the substantive points made in these comments, and the Department's responses.

A. "Written Evidence"

Several commenters requested clarification of what "written evidence" is required by paragraphs (a)(1) and (a)(2) of the interim final rule. In paragraph (a)(1), the interim final rule required "written evidence of the applicant's title or that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust." In paragraph (a)(2), the interim final rule required "written evidence of how title was acquired by the applicant or current owner." Commenters stated that it appeared the same evidence may satisfy both (a)(1) and (a)(2), in the form of the applicant's deed. To clarify, the final rule specifies that the written evidence must be a deed or other conveyance instrument providing evidence of the applicant's title. The final rule also specifies that if the applicant does not yet have title, the written evidence must be: (1) A deed or other conveyance instrument providing evidence of the transferor's title; and (2) a written agreement or affidavit from the transferor demonstrating that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust.

A few commenters also noted that (a)(1) and (a)(2) appeared to impose redundant requirements. The final rule addresses this comment by deleting (a)(2), because the specified written evidence required by (a)(1) will necessarily also serve as evidence of how the applicant or current owner acquired title.

B. Alternatives to a Title Insurance Policy

A commenter requested clarification of paragraph (b)'s requirement for a "current title insurance commitment" to confirm that no title insurance policy needs to be purchased in the name of the U.S. in trust for the applicant. The commenter is correct that no title insurance policy needs to be purchased if the applicant provides a current title insurance commitment. Also, if the applicant or current owner already obtained a title insurance policy when they acquired the land, the applicant need not purchase a new title insurance policy if they provide the previously issued policy and an abstract of title dating from the time the land was acquired by the applicant or current owner to the present. No clarification to the rule was made in response to this comment because the rule already states the alternatives to purchasing a title insurance policy.

Another commenter noted that, because the rule requires only the commitment to issue title insurance rather than an actual title insurance policy, that title companies may stop issuing commitments without a final title policy. For BIA's purposes, the title commitment is sufficient evidence and, in recognition that there is an extra cost imposed for obtaining the actual title insurance policy, the rule requires only the title commitment. Currently, title companies generally will issue a commitment without requiring the purchase of an actual policy; the possibility that title companies may require the purchase of an actual policy in the future does not provide a basis for BIA to require the policy. An insurance policy is not required if the applicant is proceeding with a title commitment, but applicants may choose to purchase a policy if they so desire; the rule does not prevent them from doing so.

C. Previously Issued Title Insurance Policy

A commenter requested clarification of the requirement for "the policy of title insurance issued at the time of the applicant's or current owner's acquisition of the land and an abstract of title dating from the time the land was acquired by the applicant or current owner." This commenter stated that an existing title insurance policy may not have been issued at the time of the acquisition, and suggested revising the provision to simply state "the policy of title insurance issued to the applicant or current owner." The final rule incorporates this suggestion and clarifies that the abstract must address the time period beginning when the insurance policy was issued to the applicant or current owner.

One commenter asked whether BIA, and the Office of the Solicitor, will still require a current title commitment, even when the applicant provides the previously issued policy and abstract. Upon the effective date of the rule, the BIA and Office of the Solicitor will require only the title evidence listed in the rule.

D. Abstract of Title

A commenter requested clarification as to whether the requirement for an abstract of title is intended to address title going forward rather than backward, and if so, that it would not be a title abstract in the traditional sense because the abstract would reflect only the current owner. The final rule clarifies that the requirement is intended to address title going forward, by adding "to the present." The commenter is correct that the abstract of title will be straightforward, and may only reflect the current owner, but the abstract will serve the purpose of confirming the current owner's ownership and showing whether any liens, encumbrances, or infirmities have been placed on title prior to acceptance in trust, in lieu of requiring the applicant to purchase a new title commitment.

E. Marketability and Exceptions to the Title Insurance Policy

A commenter requested clarification on what "marketability" means. The commenter also asked how BIA will address reversionary clauses and defeasible title issues and their effect on marketability. The final rule makes no substantive change to the provision allowing BIA to require the elimination of any such liens, encumbrances, or infirmities if BIA determines they make title to the land unmarketable. Likewise, the final rule makes no substantive change to the meaning of "unmarketable."

A commenter suggested the rule explain that the deed will not be recorded until exceptions to the title insurance policy are satisfied. The final rule does not include this explanation because it is inaccurate. There is no requirement that all exceptions be eliminated. The Department reviews and makes a determination on each exception as to whether it must be eliminated, and does not require the elimination of exceptions that do not affect the title to the land.

F. Standards To Be Used in Place of DOJ Standards

A few commenters requested more specifics as to what title standards the Department will apply in lieu of the DOJ standards. For example, one commenter asked whether the Department will still require applicants to use the American Land Title Association (ALTA) U.S. policy form in those cases in which the applicant chooses to obtain title insurance. The BIA has updated the fee-to-trust handbook to ensure it is consistent with this final rule. The revised version of the fee-to-trust handbook specifies that, if the applicant chooses to submit title insurance, it should use the most current version of the ALTA U.S. policy form. A commenter also asked how the Department will determine who is qualified to provide title evidence, in lieu of the DOJ standards. The revised fee-to-trust handbook specifies that the Department will look to the appropriate licensing authority for qualifications. A commenter also asked what type of deed will be required to convey title to the U.S. on behalf of the applicant. The Department will continue the approach it has taken in the past (requiring a warranty deed in nearly all instances), specified in the revised fee-to-trust handbook.

A commenter asked whether the Department will look to State laws for guidance. The Department relies on national standards, as set out in the rule and revised fee-to-trust handbook, rather than State laws, with regard to the Department's decision whether to approve title.

G. Timing and Timelines

One commenter requested stating that the applicant need not provide title evidence until after the Secretary makes the decision to take the land into trust. The final rule only addresses what title evidence is required, it is not intended to change the Department's process or timing.

One commenter suggested imposing timelines on the Department's issuance of preliminary and final title opinions. The final rule does not incorporate this suggestion because there are too many variables to establish a definitive timeframe for preparation of these documents.

H. Other Comments

A few commenters suggested edits that were beyond the scope of the interim final rule. One Tribal commenter noted the difficulty in obtaining title insurance policies in California and suggested actions the Department could take to educate title insurance companies. Another commenter suggested adding a requirement to obtain State approval to transfer jurisdiction of land being taken into trust. These comments are outside the scope of this rulemaking.

A commenter also stated that the revision is not appropriate for an interim final rule. The Department disagrees because the rule is a targeted, procedural improvement.

IV. Changes From Interim Final Rule to Final Rule

As described above, the final rule includes edits to the interim final rule for clarification. The edits are summarized in the table below:

Former rule	Interim final rule	New rule (effective May 16, 2016)
The Secretary will require title evidence meeting the DOJ standards.	Requires the following in lieu of the DOJ standards:.	Clarifies "written evidence" to be:

Former rule	Interim final rule	New rule (effective May 16, 2016)
	(1) Written evidence of the applicant's title or that title will be transferred to the United States on behalf of the applicant to complete the trust acquisition; and	(1) Applicant's deed; or
	(2) written evidence of how the applicant or current owner acquired title; and	(2) If the applicant does not yet have title, the transferor's deed and a written statement from the transferee that it will transfer title to the United States on behalf of the applicant.
	(3) either:	Deletes the requirement for written evidence of how the applicant or current owner acquired title.
	(i) A current title insurance commitment; or	Clarifies that the abstract must cover the time period beginning when the land was acquired by the applicant or current owner up to the present.
	(ii) a previously issued title insurance policy and abstract dating from the time the land was acquired to the present.	Allows applicant to choose to provide evidence meeting the DOJ standards in lieu of the current title commitment or policy and abstract.
The Secretary will notify the applicant of any liens, encumbrances, or infirmities which may exist.	Adds that the Secretary may seek additional information from the applicant if needed to address the issues.	No change from interim final rule.
The Secretary may require elimination of liens, encumbrances, infirmities prior to taking final approval action on the acquisition.	No procedural change	No change from interim final rule.
The Secretary shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.	No procedural change	No change from interim final rule.

V. Applicability of New Rule

As the preamble to the interim final rule stated, this rule will apply to all trust applications submitted after the effective date. This rule will also apply to trust applications that are pending and for which the Preliminary Title Opinion has not yet been prepared by the Office of the Solicitor as of the effective date. However, if applicants have already submitted evidence meeting the DOJ standards, they need not re-submit evidence pursuant to this rule. This rule will not apply to trust applications that are pending and for which the Preliminary Title Opinion has already been prepared by the Office of the Solicitor as of the effective date.

BIA has updated its fee-to-trust handbook to incorporate changes required by the new rule. The handbook is available at: *http://www.bia.gov/cs/groups/xraca/documents/text/idc1-024504.pdf.*

VI. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule removes the requirement for title evidence to comply with DOJ standards and replaces this requirement with a more targeted requirement for title evidence; it will not result in additional expenditures by any entity.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule removes the requirement for title evidence to comply with DOJ standards and replaces this requirement with a more targeted requirement for title evidence; it does not affect States or the relationship with States in any way.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian Tribes and Indian trust assets and have determined there is no "substantial direct effect" on Tribes, on the relationship between the Federal Government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The rule will affect Tribes who apply to take land into trust, in that the rule removes unnecessary submissions of documentation. However, the rule does not have a substantial direct effect on Tribes because Tribes can still submit evidence meeting the DOJ title standards should they so choose and allowing the option of submitting a past title insurance policy and an abstract of title is intended to be less burdensome than the existing rule. The Department is committed to meaningful consultation with Tribes on substantive matters that have a substantial direct effect on Tribes, in accordance with E.O. 13175 and the Department of the Interior Policy on Consultation with Indian Tribes.

I. Paperwork Reduction Act

This information collection for trust land applications is authorized by OMB Control Number 1076–0100, with an expiration of 08/31/16. The elimination of the requirement to comply with DOJ standards is not expected to have a quantifiable effect on the hour burden estimate for the information collection, but BIA will review whether its current estimates are affected by this change at the next renewal.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information, see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Administrative Procedure Act

We published an interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b)(B). Under section 553(b)(B), we find that prior notice and comment are unnecessary because this is a minor, technical action that eliminates an unnecessary requirement. This rule removes the unnecessary requirement that the title evidence the applicant submits must comply with DOJ standards for title evidence. Delay in publishing this rule would unnecessarily continue imposing the unnecessary requirement on applicants and would therefore be contrary to the public interest. We stated that we would review comments and initiate a proposed rulemaking, revise, or withdraw the rule. Because the comments we received were primarily seeking clarifications, we have chosen to revise the rule with requested clarifications.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the interim rule amending 25 CFR part 151 which was published at 81 FR 10477 on March 1, 2016, is adopted as a final rule with the following change:

PART 151—LAND ACQUISITIONS

■ 1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat.1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

■ 2. Revise § 151.13 to read as follows:

§ 151.13 Title review.

(a) If the Secretary determines that she will approve a request for the acquisition of land from unrestricted fee status to trust status, she shall require the applicant to furnish title evidence as follows:

(1) The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the transferor, that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust; and

(2) Either:

(i) A current title insurance commitment; or

(ii) The policy of title insurance issued to the applicant or current owner and an abstract of title dating from the time the policy of title insurance was issued to the applicant or current owner to the present.

(3) The applicant may choose to provide title evidence meeting the title standards issued by the U.S. Department of Justice, in lieu of the evidence required by paragraph (a)(2) of this section.

(b) After reviewing submitted title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information from the applicant needed to address such issues. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition, and she shall require elimination prior to such approval if she determines that the liens, encumbrances or infirmities make title to the land unmarketable.

Dated: May 11, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–11489 Filed 5–13–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0392]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. The deviation is necessary to accommodate the University of Washington, and University of Washington Bothell commencement ceremony traffic. This deviation allows the bridge to remain in the closed-to-navigation position to accommodate the timely movement of vehicular traffic.

DATES: This deviation is effective from 9:30 a.m. on June 11, 2016 to 6:15 p.m. on June 12, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0392] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The University of Washington, through the Washington Department of Transportation, has requested that the Montlake Bridge bascule span remain in the closed-to-navigation position, and need not open to marine traffic to facilitate timely movement of commencement vehicular traffic.

The Montlake Bridge across the Lake Washington Ship Canal, at mile 5.2, in the closed position provides 30 feet of vertical clearance throughout the navigation channel, and 46 feet of vertical clearance throughout the center 60-feet of the bridge; vertical clearance references to the Mean Water Level of Lake Washington. The normal operating schedule for Montlake Bridge operates in accordance with 33 CFR 117.1051(e).

The deviation period is from 9:30 a.m. to 12:30 p.m. and from 4:30 p.m. to 6:30 p.m. on June 11, 2016; and from 11:45 a.m. to 1:45 p.m. and from 4:15 p.m. to 6:15 p.m. on June 12, 2016. The deviation allows the bascule span of the Montlake Bridge to remain in the closed-to-navigation position for the times and dates herein. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for marine vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 10, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–11495 Filed 5–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0380]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the upper deck of the Steel Bridge, mile 12.1, and the Burnside Bridge, mile 12.4, both crossing the Willamette River, at Portland, OR. The deviation is necessary to accommodate the annual Rose Festival Parade event, which crosses the Steel Bridge and Burnside Bridge. This deviation allows the upper deck of the Steel Bridge and Burnside Bridge to remain in the closed-to-navigation position and need not open for marine traffic to allow for the safe movement of event participants.

DATES: This deviation is effective from 7 a.m. to 2 p.m. on June 11, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0380] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: TriMet Public Transit and Multnomah County have requested that the upper deck of the Steel Bridge and the Burnside Bridge remain in the closed-to-navigation position to accommodate the annual Rose Festival Parade event. The Steel Bridge, mile 12.1, and the Burnside Bridge, mile 12.4, both cross the Willamette River.

The Steel Bridge is a double-deck lift bridge with a lower lift deck and an upper lift deck which operate independent of each other. When both decks are in the down position the bridge provides 26 feet of vertical clearance. When the lower deck is in the up position, the bridge provides 71 feet of vertical clearance. This deviation does not affect the operating schedule of the lower deck which opens on signal. The normal operating schedule for the upper deck of the Steel Bridge operates in accordance with 33 CFR 117.897(c)(3)(ii).

The Burnside Bridge provides a vertical clearance of 64 feet in the closed-to-navigation position. The normal operating schedule for the Burnside Bridge operates in accordance with 33 CFR 117.897(c)(3)(iii). The Steel Bridge and Burnside Bridge clearances are above Columbia River Datum 0.0.

The deviation period is from 7 a.m. to 2 p.m. on June 11, 2016 to accommodate the route of the annual Rose Festival Parade event. The deviation allows the upper deck of the Steel Bridge, mile 12.1, and the Burnside Bridge, mile 12.4, both crossing the Willamette River, to remain in the closed-to-navigation position and need not open for maritime traffic from 7 a.m. to 2 p.m. on June 11, 2016. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft.

Vessels able to pass through the Steel Bridge and Burnside Bridge in the closed positions may do so at any time. The bridges will be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridges so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 9, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard.

[FR Doc. 2016–11381 Filed 5–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0337]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Minneapolis, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River (UMR) from mile 853.2 to mile 854.2. The safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP). Deviation from the safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative.

DATES: This rule is effective from 10 p.m. until 11 p.m. on June 17, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0337 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
UMR	Upper Mississippi River

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not notified of the event until April 19, 2016. After full review of the event details, the Coast Guard determined that action is needed to protect people and property from the safety hazards associated with a fireworks display on the Upper Mississippi River. It would be impracticable to publish a NPRM because the safety zone must be established on June 17, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. On June 17, 2016, a fireworks display will take place on the Upper Mississippi River between mile 853.2 and mile 854.2 for the 150th Celebration of General Mills. The COTP has determined that potential hazards associated with the fireworks display will be a safety concern for anyone within the area that is designated as the safety zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. until 11 p.m. on June 17, 2016. The safety zone will cover all navigable waters on the Upper Mississippi River between mile 853.2 and mile 854.2. The safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This temporary final rule establishes a safety zone that will be enforced for a limited time period. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP or other designated representative. Based on the location and short duration of the enforcement period, this rule does not pose a significant regulatory impact. Additionally, notice of this safety zone or any changes in the planned schedule will be made via Broadcast Notice to Mariners and Local Notice to Mariners.

Deviation from this rule may be requested from the COTP and will be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately one hour that will prohibit entry between miles 853.2 and 854.2 on the Upper Mississippi River. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0337 to read as follows:

§ 165.T08–0337 Safety Zone; Upper Mississippi River 853.2 to 854.2; Minneapolis, MN.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River between miles 853.2 and 854.2, extending the entire width of the river.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Upper Mississippi River in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or through Coast Guard Sector Upper Mississippi River at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule is effective and will be enforced from 10 p.m. until 11 p.m. on June 17, 2016.

(e) *Information broadcasts.* The COTP or the COTP's representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: May 9, 2016.

M. L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2016–11569 Filed 5–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0136]

Safety Zone; Fourth of July Fireworks, Crescent City, Crescent City Harbor, Crescent City, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the safety zone for the Crescent City Fourth of July Fireworks display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191, Table 1, Item number 4 will be enforced from 9:30 p.m. to 10 p.m. on July 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, Table 1, Item number 4 on July 4, 2016. Upon commencement of the 30 minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2016, the safety zone will encompass the navigable waters surrounding the land-based launch site on the West Jetty of Crescent City Harbor within a radius of 700 feet in approximate position 41°44′41″ N, 124°11′59″ W (NAD 83) for the Fourth of July Fireworks, Crescent City in 33 CFR 165.1191, Table 1, Item number 4. Upon the conclusion of the fireworks display the safety zone shall terminate. This safety zone will be in effect from 9:30 p.m. to 10 p.m. on July 4, 2016.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice of enforcement is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide the maritime community with notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: April 20, 2016.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2016–11490 Filed 5–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0050; FRL–9946–39–Region 10]

Approval and Promulgation of Implementation Plans; Oregon: Interstate Transport of Lead and Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. On October 20, 2015, the State of Oregon made a submittal to the Environmental Protection Agency (EPA) to address these requirements. The EPA is approving the submittal as meeting the requirements that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 lead (Pb) and 2010 nitrogen dioxide (NO_2) National Ambient Air Quality Standards (NAAQS) in any other state.

DATES: This final rule is effective June 15, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2016–0050. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Programs Unit, Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

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I. Background Information
II. Final Action
III. Statutory and Executive Orders Review

I. Background Information

On October 20, 2015, Oregon made a submittal to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for multiple NAAQS, including the 2008 Pb and 2010 NO_2 NAAQS. On March 11, 2016, the EPA proposed to approve the submittal as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb and 2010 NO_2 NAAQS (81 FR 12849). An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA's reasons for approval were provided in the proposal and will not restated here. The public comment period for the proposal ended on April 11, 2016. The EPA received no comments.

II. Final Action

The EPA is approving Oregon's October 20, 2015 submittal as meeting the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 NO_2 NAAQS. The remainder of the submittal, with respect to the 2010 sulfur dioxide and 2012 fine particulate matter NAAQS, will be addressed in separate, future actions.

III. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 4, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

■ 2. Section 52.1991 is amended by adding paragraph (e) to read as follows:

§ 52.1991 Section 110(a)(2) infrastructure requirements.

* * * * *

(e) The EPA approves Oregon's October 20, 2015 submittal as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 lead and 2010 nitrogen dioxide NAAQS.

[FR Doc. 2016–11380 Filed 5–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2012–0360; FRL–9946–32–OAR]

RIN 2060–AR47

National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations: Action Denying a Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action denying a petition for reconsideration.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for reconsideration of a final rule published in the **Federal Register** on March 18, 2015. The rule promulgated amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Off-Site Waste and Recovery Operations (OSWRO) based on our residual risk and technology review (RTR) conducted for the OSWRO source category. The agency previously granted reconsideration of one issue raised in the petition. The Administrator denied the second issue raised in the petition in letters to the petitioners dated May 5, 2016.

DATES: May 16, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Seidman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone (202) 564–0906; email at *seidman.emily@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This **Federal Register** document, the petition for reconsideration, and the letters granting and denying the petition for reconsideration are available in the docket the EPA established for the OSWRO NESHAP under Docket ID No. EPA–HQ–OAR–2012–0360. The document identification number for the petition for reconsideration is EPA–HQ–OAR–2012–0360–0128. The document identification numbers for the EPA's response letters are EPA–HQ–OAR–2012–0360–0122 and EPA–HQ–OAR–2012–0360–0123.

All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

This **Federal Register** document, the petition for reconsideration, and the letters granting and denying the petition can also be found on EPA's Web site at *http://www.epa.gov/ttn/atw/offwaste/oswropg.html.* The amended OSWRO NESHAP was published in the **Federal Register** on March 15, 2015, at 80 FR 14248.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Courts of Appeals have venue for petitions for review of final EPA actions. This section provides, in part, that the petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) The agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such actions are locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that its denial of the petition for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because the actions directly affect the OSWRO NESHAP, which is a nationally applicable regulation. Thus, any petitions for review of the EPA's decision denying the petitioners' request for reconsideration must be filed in the United States Court of Appeals for the District of Columbia Circuit by July 15, 2016.

III. Description of Action

On March 18, 2015, the EPA promulgated a final rule amending the OSWRO NESHAP based on the RTR conducted for the OSWRO source category. 80 FR 14248, March 18, 2015. The EPA amended the OSWRO NESHAP to revise provisions related to emissions during periods of startup, shutdown, and malfunction; to add requirements for electronic reporting of performance testing; to add monitoring requirements for pressure relief devices (PRDs); to revise routine maintenance provisions; to clarify provisions for open-ended valves and lines and for some performance test methods and procedures; and to make several minor clarifications and corrections. Subsequent to publishing the final rule, the EPA received a petition for reconsideration submitted jointly by Eastman Chemical Company and the American Chemical Council (dated May 18, 2015). This petition sought reconsideration of two of the amended provisions of the OSWRO NESHAP: (1) The equipment leak provisions for connectors, and (2) the requirement to monitor PRDs on portable containers. The EPA considered the petition and supporting information along with information contained in the OSWRO NESHAP amendment rulemaking docket (Docket ID No. EPA–HQ–OAR–2012–0360) in reaching a decision on the petition. The Agency granted reconsideration of the PRD monitoring requirement in a letter to the petitioners dated February 8, 2016. In separate letters to the petitioners dated May 5, 2016, the Administrator denied reconsideration of the equipment leak provisions for connectors and explained the reasons for the denial in these letters. These letters are available in the OSWRO NESHAP amendment rulemaking docket.

Dated: May 5, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–11252 Filed 5–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123, 131, 233 and 501

[EPA–HQ–OW–2014–0461; FRL–9946–33–OW]

Revised Interpretation of Clean Water Act Tribal Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interpretive rule.

SUMMARY: Section 518 of the Clean Water Act (CWA), enacted as part of the 1987 amendments to the statute, authorizes EPA to treat eligible Indian tribes with reservations in a manner similar to states (TAS) for a variety of purposes, including administering each of the principal CWA regulatory programs and receiving grants under several CWA authorities. Since 1991, EPA has followed a cautious interpretation that has required tribes, as a condition of receiving TAS regulatory authority under section 518, to demonstrate inherent authority to regulate waters and activities on their reservations under principles of federal Indian common law. The Agency has consistently stated, however, that its approach was subject to change in the event of further congressional or judicial guidance addressing tribal authority under CWA section 518. Based on such guidance, EPA in the interpretive rule we are finalizing today concludes definitively that section 518 includes an express delegation of authority by Congress to Indian tribes to administer regulatory programs over their entire reservations, subject to the eligibility requirements in section 518. This reinterpretation streamlines the process for applying for TAS, eliminating the need for applicant tribes to demonstrate inherent authority to regulate under the Act and allowing eligible tribes to implement the congressional delegation of authority. The reinterpretation also brings EPA's treatment of tribes under the CWA in line with EPA's treatment of tribes under the Clean Air Act, which has similar statutory language addressing tribal regulation of Indian reservation areas. This interpretive rule

does not revise any regulatory text. Regulatory provisions remain in effect requiring tribes to identify the boundaries of the reservation areas over which they seek to exercise authority and allowing the adjacent state(s) to comment to EPA on an applicant tribe's assertion of authority. This rule will reduce burdens on applicants associated with the existing TAS process and has no significant cost.

DATES: This final interpretive rule is effective on May 16, 2016.

ADDRESSES: EPA has established a docket for this rule under Docket ID No. EPA–HQ–OW–2014–0461. All documents in the docket are listed on the *http://www.regulations.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Thomas Gardner, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–0386; email address: *TASreinterpretation@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information
  A. Does this interpretive rule apply to me?
  B. What interpretation is the Agency making?
  C. How was this rule developed?
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IV. What developments support EPA's revised statutory interpretation?
  A. Relevant Congressional, Judicial and Administrative Developments
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  1. Geographic Scope of TAS for Regulatory Programs
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VIII. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act (NTTAA)
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act (CRA)

I. General Information

A. Does this interpretive rule apply to me?

This rule applies to tribal governments that seek eligibility to administer regulatory programs under the Clean Water Act (CWA, or the Act). The table below provides examples of entities that could be affected by this rule or have an interest in it.

Category	Examples of potentially affected or interested entities
Tribes	Federally recognized tribes with reservations that could potentially seek eligibility to administer CWA regulatory programs, and other interested tribes.
States	States adjacent to potential applicant tribes.
Industry	Industries discharging pollutants to waters within or adjacent to reservations of potential applicant tribes.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to waters within or adjacent to reservations of potential applicant tribes.

If you have questions regarding the effect of this interpretive rule on a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What interpretation is the Agency making?

Today's interpretive rule streamlines how tribes apply for TAS under CWA section 518 for CWA regulatory programs including the water quality standards program. It eliminates the need for applicant tribes to demonstrate inherent authority to regulate under the Act, thus allowing tribes to implement a delegation of authority by Congress. Specifically, EPA revises its existing interpretation of CWA section 518 to conclude definitively that this provision includes an express delegation of authority by Congress to Indian tribes to administer regulatory programs over their entire reservations, subject to the eligibility requirements in section 518.

C. How was this rule developed?

EPA conducted consultation and coordination with tribes and states before proposing the reinterpretation in the **Federal Register** on August 7, 2015. See 80 FR 47430 (August 7, 2015) ("proposed rule," "EPA's proposal," "proposed reinterpretation"), available in the docket for this rule. During the 60-day public comment period, EPA provided informational webinars for the public and conducted further consultation and coordination with tribes and states.

EPA received a total of 44 comments from the public on the proposed interpretive rule. A majority (27) of the comments expressed support for the rule, including unanimous support from tribes and tribal organizations that responded. Sections IV and V address issues and questions about the proposal that commenters raised.

Today's rule finalizes the proposal, reflecting EPA's consideration of the comments and other input received. The comments, EPA's responses to the comments, and meeting notes are available in the public docket at *http://www.regulations.gov.*

D. What is the Agency's authority for issuing this reinterpretation?

The CWA, 33 U.S.C. 1251, *et seq.,* including section 518 (33 U.S.C. 1377).

E. What are the incremental costs and benefits of this interpretive rule?

This rule entails no significant cost. Its only effect will be to reduce the administrative burden for a tribe applying in the future to administer a CWA regulatory program, and to potentially increase the pace at which tribes seek such programs. See the discussion of administrative burden and cost in sections VII and VIII.B.

F. Judicial Review

This interpretive rule, which sets forth EPA's revised interpretation of CWA section 518, is not a final agency action subject to immediate judicial review. This interpretive rule is not determinative of any tribe's eligibility for TAS status. Rather, it notifies prospective applicant Indian tribes and others of EPA's revised interpretation. Today's interpretive rule would be subject to judicial review only in the context of a final action by EPA on a TAS application from an Indian tribe for the purpose of administering a CWA regulatory program based on the revised interpretation.

II. Background

A. Statutory History

Congress added CWA section 518 as part of amendments made to the statute in 1987. Section 518(e) authorizes EPA to treat eligible Indian tribes in a similar manner as states for a variety of purposes, including administering each of the principal CWA regulatory programs and receiving grants under several CWA funding authorities. Section 518(e) is commonly known as the "TAS" provision, for treatment in a manner similar to a state.

Section 518(e) establishes eligibility criteria for TAS, including requirements that the tribe have a governing body carrying out substantial governmental duties and powers; that the functions to be exercised by the tribe pertain to the management and protection of water resources within the borders of an Indian reservation; and that the tribe be reasonably expected to be capable of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Act and applicable regulations. Section 518(e) also requires EPA to promulgate regulations specifying the TAS process for applicant tribes. See section II.B.

Section 518(h) defines "Indian tribe" to mean any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. It also defines "federal Indian reservation" to mean all land within the limits of any reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

B. Regulatory History

Pursuant to section 518(e), EPA promulgated several final regulations establishing TAS criteria and procedures for Indian tribes interested in administering programs under the Act. The relevant regulations addressing TAS requirements for the principal CWA regulatory programs are: [1]

- 40 CFR 131.8 for section 303(c) water quality standards (WQS). Final rule published December 12, 1991 (56 FR 64876); proposed rule published September 22, 1989 (54 FR 39098). Referred to hereafter as the "1991 WQS TAS rule" or "1991 TAS rule";
- 40 CFR 131.4(c) for section 401 water quality certification, published in the 1991 WQS TAS rule;
- 40 CFR 123.31–123.34 for section 402 National Pollutant Discharge Elimination System (NPDES) permitting and other provisions, and 40 CFR 501.22–501.25 for the state section 405 sewage sludge management program. Final rule published December 22, 1993 (58 FR 67966); proposed rule published March 10, 1992 (57 FR 8522); and
- 40 CFR 233.60–233.62 for section 404 dredge or fill permitting. Final rule published February 11, 1993 (58 FR 8172); proposed rule published November 29, 1989 (54 FR 49180).

In 1994, EPA amended the above regulations to simplify the TAS process and eliminate unnecessary and duplicative procedural requirements. *See* 59 FR 64339 (December 14, 1994) (the "Simplification Rule"). For example, the Simplification Rule eliminated the need for a tribe to prequalify for TAS before applying for sections 402, 404 and 405 permitting programs. Instead, the rule provided that a tribe would establish its TAS eligibility at the program approval stage, subject to EPA's notice and comment procedures already established for state program approvals in 40 CFR parts 123 and 233. The rule retained the prequalification requirements (including local notice and comment procedures) for section 303(c) WQS and section 401 water quality certifications. *Id.; see also,* 40 CFR 131.8(c)(2), (3).[2] The TAS regulations for CWA regulatory programs have remained intact since promulgation of the Simplification Rule.

Today's interpretive rule does not address or affect the TAS requirements or review process for tribes to receive grants.[3] The receipt of grant funding does not involve any exercise of regulatory authority. Therefore, a determination of TAS eligibility solely for funding purposes does not, under existing regulations, require an analysis or determination regarding an applicant tribe's regulatory authority.

III. How did EPA interpret the CWA TAS provision in 1991 when establishing TAS regulations for CWA regulatory programs?

The TAS eligibility criteria in section 518(e) make no reference to any demonstration of an applicant tribe's regulatory authority to obtain TAS. Rather, the relevant part of section 518(e)—which is section 518(e)(2)—requires only that the functions to be exercised by the tribe pertain to the management and protection of reservation water resources. As noted above, section 518(h)(1) also defines Indian reservations to include all reservation land irrespective of who owns the land. EPA nonetheless took a cautious approach when it issued the 1991 WQS TAS rule and subsequent regulations described in section II.B above. The 1991 approach required each tribe seeking TAS for the purpose of administering a CWA regulatory program to demonstrate its inherent authority under principles of federal Indian law, including gathering and analyzing factual information to demonstrate the tribe's inherent authority over the activities of nonmembers of the tribe on nonmember-owned fee lands within a reservation.[4]

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[1] In early 2016 EPA proposed to add criteria and procedures for tribes to obtain TAS to administer the CWA Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program. 80 FR 2791, Jan. 19, 2016. The proposal has not yet been finalized and thus is not in effect at this time.

[2] Under the CWA and EPA's regulations, tribes can apply for TAS under CWA section 518 for the purpose of administering WQS and simultaneously submit actual standards for EPA review under section 303(c). Although they can proceed together, a determination of TAS eligibility and an approval of actual water quality standards are two distinct actions.

[3] EPA has promulgated regulations governing the TAS application and review requirements for CWA grant funding programs. *See, e.g.,* 40 CFR 35.580–588 (CWA section 106 water pollution control funding); 40 CFR 35.600–615 (CWA section 104 water quality cooperative agreements and wetlands development funding); 40 CFR 35.630–638 (CWA section 319 nonpoint source management grants).

[4] Under principles of federal Indian law, demonstrations of inherent tribal authority over such non-member activities are guided by the principles expressed in *Montana* v. *United States,* 450 U.S. 544 (1981), and its progeny.

EPA recognized at the time that there was significant support for the proposition that Congress had intended to delegate authority to otherwise eligible tribes to regulate their entire reservations under the Act. Notably, in a plurality opinion in *Brendale* v. *Confederated Tribes and Bands of the Yakima Nation,* 492 U.S. 408 (1989), Justice White had even cited section 518 as an example of a congressional delegation of authority to Indian tribes.[5] EPA also stated the Agency's interpretation that in section 518, Congress had expressed a preference for tribal regulation of surface water quality on reservations to assure compliance with the goals of the CWA. 56 FR at 64878–79. Nonetheless, in an abundance of caution, EPA opted at the time to require tribes to demonstrate, on a case-by-case basis, their inherent jurisdiction to regulate under the CWA. EPA was clear, however, that this approach was subject to change in light of further judicial or congressional guidance. *Id.*

For further details about EPA's 1991 interpretation of the CWA TAS provision, see section III of EPA's proposal. 80 FR at 47433–34.

IV. What developments support EPA's revised statutory interpretation?

A. Relevant Congressional, Judicial and Administrative Developments

Since 1991, EPA has taken final action approving TAS for CWA regulatory programs for 53 tribes.[6] Three of those decisions were challenged in judicial actions. The last challenge concluded in 2002. In each of the cases, the reviewing court upheld EPA's determination with respect to the applicant tribe's inherent authority to regulate under the CWA. *Wisconsin* v. *EPA,* Case No. 96–C–90 (E.D. Wis. 1999), *aff'd,* 266 F.3d 741 (7th Cir. 2001), *cert. denied,* 535 U.S. 1121 (2002) (Sokaogon Chippewa Community); *Montana* v. *EPA,* 941 F. Supp. 945 (D. Mont. 1996), *aff'd,* 137 F.3d 1135 (9th Cir.), *cert. denied,* 525 U.S. 921 (1998) (Confederated Salish and Kootenai Tribes of the Flathead Reservation); *Montana* v. *EPA,* 141 F.Supp.2d 1259 (D. Mont. 1998) (Assiniboine and Sioux Tribes of the Fort Peck Reservation).[7]

Notably, the first court to review a challenge to an EPA CWA TAS approval expressed the view that the statutory language of section 518 indicated plainly that Congress intended to delegate authority to Indian tribes to regulate water resources on their entire reservations, including regulation of non-Indians on fee lands within a reservation. *Montana* v. *EPA,* 941 F. Supp. at 951–52. In that case, the applicant tribe, participating as amicus, argued that the definition of "Federal Indian reservation" in CWA section 518(h)(1)—which expressly includes all land within the limits of a reservation notwithstanding the issuance of any patent—combined with the bare requirement of section 518(e) that the functions to be exercised by the applicant tribe pertain to reservation water resources, demonstrates that section 518 provides tribes with delegated regulatory authority over their entire reservations, including over non-Indian reservation lands. *Id.* Because EPA had premised its approval of the TAS application at issue upon a showing of tribal inherent authority, it was unnecessary for the district court to reach the delegation issue as part of its holding in the case. Nonetheless, the court readily acknowledged that section 518 is properly interpreted as an express congressional delegation of authority to Indian tribes over their entire reservations. The court noted that the legislative history might be ambiguous, although only tangentially so, since the bulk of the legislative history relates to the entirely separate issue of whether section 518(e) pertains to non-Indian water quantity rights, which it does not. *Id.* The court observed the established principle that Congress may delegate authority to Indian tribes—per *United States* v. *Mazurie,* 419 U.S. 544 (1975)—and commented favorably on Justice White's statement regarding section 518 in *Brendale. Id.* The court also noted that a congressional delegation of authority to tribes over their entire reservations "comports with common sense" to avoid a result where an interspersed mixing of tribal and state WQS could apply on a reservation depending on whether the waters traverse or bound tribal or non-Indian reservation land. *Id.* Having thus analyzed CWA section 518, the court concluded—albeit in dicta—that Congress had intended to delegate such authority to Indian tribes over their entire reservations.

The TAS provision of a separate statute—the Clean Air Act (CAA)—and the review of that provision in court provide additional relevant guidance (both congressional and judicial) regarding legislative intent to treat Indian reservations holistically for purposes of environmental regulation by delegating authority over such areas to eligible Indian tribes. Congress added the CAA TAS provision—section 301(d)—to the statute in 1990, only three years after it enacted CWA section 518. Although CAA section 301(d) predates EPA's 1991 CWA TAS rule, it was not until 1998 that EPA promulgated its regulations interpreting the CAA TAS provision as an express congressional delegation of authority to eligible Indian tribes. 40 CFR part 49; 63 FR 7254 (February 12, 1998) (the "CAA Tribal Authority Rule"). The U.S. Court of Appeals for the D.C. Circuit upheld that interpretation two years later. *Arizona Public Service Co.* v. *EPA,* 211 F.3d 1280 (D.C. Circuit 2000) ("*APS*"), *cert. denied,* 532 U.S. 970 (2001). As described below, in the preamble to the CAA Tribal Authority Rule and in *APS,* EPA and the D.C. Circuit considered significant similarities between the CWA and CAA tribal provisions. With the benefit of the court's careful review in *APS,* EPA believes that enactment of the CAA TAS provision in 1990 provides useful guidance from Congress regarding its similar intent in 1987 to provide for uniform tribal regulation of mobile environmental pollutants within reservations. Relevant aspects and treatment of the CAA TAS provision are described below.

EPA finalized its regulations implementing CAA section 301(d) in 1998. The CAA TAS provision, combined with the definition of Indian tribe in CAA section 302(r), established the same basic TAS eligibility criteria for CAA purposes that apply under the CWA: *i.e.,* federal recognition, tribal government carrying out substantial duties and powers, jurisdiction, and capability. With regard to jurisdiction, EPA carefully analyzed the language and legislative history of the relevant portion of the CAA TAS provision, CAA section 301(d)(2)(B), and concluded that Congress had intended to delegate authority to eligible Indian tribes to administer CAA regulatory programs over their entire reservations irrespective of land ownership—*e.g.,* including over nonmember fee lands within the reservation. 63 FR at 7254–

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[5] *Brendale* v. *Confederated Tribes and Bands of the Yakima Nation,* 492 U.S. 408, 428 (1989). Although highly instructive, EPA recognized that the statement regarding section 518 was not necessary to the plurality's decision. See 56 FR at 64880. The five Justices not joining Justice White's opinion did not discuss the CWA provision.

[6] The site ***http://www.epa.gov/wqs-tech/epa-approvals-tribal-water-quality-standards*** provides a list of tribes with TAS eligibility for the section 303(c) water quality standards and section 401 water quality certification programs. To date, EPA has not approved TAS for any tribe for CWA section 402 or section 404 permitting.

[7] EPA was also upheld in the only case challenging the Agency's approval of actual tribal water quality standards under CWA section 303(c) (which is a distinct action from EPA's approval of tribal TAS eligibility under section 518). *City of Albuquerque* v. *Browner,* 97 F.3d 415 (10th Cir. 1996), *cert. denied,* 522 U.S. 965 (1997) (water quality standards of Isleta Pueblo).

57. EPA determined that the language of the provision distinguished between reservation and non-reservation areas over which tribes could seek TAS eligibility and plainly indicated Congress' intent that reservations will be under tribal jurisdiction. *Id.* By contrast, for non-reservation areas, tribes would need to demonstrate their inherent authority to regulate under principles of federal Indian law. *Id.*

EPA noted at that time important similarities between the CAA and CWA TAS provisions. Most notably, the tribal provisions of both statutes expressly provide eligibility for tribal programs that pertain to the management and protection of environmental resources (*i.e.,* air and water, respectively) located on Indian reservations. *Id.* at 7256. For instance, CAA section 301(d) provides for tribal regulation of air resources "within the exterior boundaries of the reservation" without any requirement for a demonstration by applicant tribes of separate authority over such reservation areas. CAA section 301(d)(2)(B). Similarly, CWA section 518 provides eligibility for tribal programs covering water resources "within the borders of an Indian reservation" and expressly defines Indian reservations to include all land within the reservation notwithstanding the issuance of any patent and including rights-of-way. CWA sections 518(e)(2), (h)(1). By their plain terms, both statutes thus treat reservation lands and resources the same way and set such areas aside for tribal programs. At the time EPA promulgated the CAA Tribal Authority Rule, however, EPA viewed the CAA—which also contained other provisions addressing tribal roles—and its legislative history as more conclusively demonstrating congressional intent to delegate authority to eligible tribes over their reservations. *Id.* EPA recognized that this resulted in different approaches to two similar TAS provisions and reiterated that the question remained open as to whether the CWA provision is also an express delegation of authority to eligible tribes. *Id.* EPA also cited to the district court decision in *Montana* v. *EPA,* which, as noted above, concluded that CWA section 518 plainly appears to delegate such authority to Indian tribes. *Id.*

Several parties petitioned for judicial review of the CAA Tribal Authority Rule and challenged whether CAA section 301(d) could be properly interpreted as a delegation of authority by Congress to eligible Indian tribes. *APS,* 211 F.3d at 1287–92. The D.C. Circuit carefully analyzed CAA section 301(d), the relevant legislative history, and the judicial precedent on delegations of authority to Indian tribes and concluded that EPA's interpretation comported with congressional intent. *Id.* The court acknowledged the similarities between the CAA and CWA TAS provisions, as well as EPA's different approach under the CWA. *Id.* at 1291–92. However, the court also noted with significance that EPA's approach under the CWA had not been subjected to judicial review and observed favorably the district court's statements in *Montana* v. *EPA* that section 518 plainly indicates congressional intent to delegate authority to Indian tribes. *Id.* Ultimately, the D.C. Circuit recognized that EPA had taken a cautious approach under the CWA but that there was no reason EPA must do so again under the CAA. *Id.*

A dissenting judge in the *APS* case disagreed that CAA section 301(d)(2)(B) expressed congressional intent to delegate authority to tribes over their reservations. *Id.* at 1301–05. Notably, the dissent's view was predicated largely on the absence in section 301(d)(2)(B) of language explicitly describing the reservation areas over which tribes would exercise CAA jurisdiction as including *all* reservation lands *notwithstanding the issuance of any patent and including rights-of-way running through the reservation* (emphasis added). *Id.* The dissent viewed this language as critical to an expression of congressional intent that tribes are to exercise delegated authority over all reservation lands, including lands owned by nonmembers of the tribes. *Id.* And in the absence of such language—which the dissent referred to as "the gold standard for such delegations"—the dissent did not view CAA section 301(d)(2)(B) as expressing Congress' intent to relieve tribes of the need to demonstrate their inherent authority to regulate under the CAA, including a demonstration of inherent authority over nonmember activities on fee lands under the Supreme Court's *Montana* test. *Id.* at 1303–04.[8] Notably, the dissent observed that the key "notwithstanding" language is, in fact, included in the relevant tribal provisions of the CWA—*i.e.,* in the definition of "federal Indian reservation" in CWA section 518(h)(1). *Id.* at 1302 (referencing *Brendale,* 492 U.S. at 428). The dissent noted that in spite of the statement in *Brendale,* EPA had determined not to treat CWA section 518 as a congressional delegation; however, the dissent also observed that no court had yet resolved the issue. *Id.*

As the D.C. Circuit stated in *APS,* no court has yet reviewed EPA's interpretation of tribal regulation under the CWA on the question of whether CWA section 518 constitutes an express delegation of authority from Congress to eligible Indian tribes to regulate water resources throughout their reservations. Importantly, members of the three courts that have considered the issue have favorably viewed such an interpretation: The U.S. Supreme Court in *Brendale,* the federal district court in *Montana* v. *EPA,* and the D.C. Circuit in *APS.*

In light of these developments, as well as EPA's experience administratively interpreting and implementing the CAA TAS provision, it is appropriate to revisit and revise EPA's approach to TAS under the CWA. In the preambles to the CWA TAS regulations from the 1990s, EPA discussed the possibility of reinterpreting CWA section 518 as an express congressional delegation of authority to tribes based on subsequent congressional or judicial guidance. Additionally, in 2011 EPA discussed the possible reinterpretation of section 518 in a review of EPA's legal authorities that could help advance environmental justice.[9] Today's rule accomplishes such a reinterpretation.

Consideration of Comments

EPA received numerous comments on the proposed rule addressing the Agency's rationale for revising its interpretation of section 518. All eighteen Indian tribes and the three tribal organizations that commented expressed strong support for the rule. Two states also expressed support for tribal opportunities to obtain TAS. Several members of the public also supported the rule, including a member of the Indian law academic community. Supportive commenters agreed that the plain language of section 518 indicates Congress' intent to delegate authority to tribes to regulate their entire reservations under the CWA and that the cited case law developments provide additional support for the revised interpretation and a solid basis for EPA to finalize the rule. Commenters noted the similarities between the CWA and CAA tribal provisions and supported EPA's effort to harmonize the treatment of Indian reservations under both statutes. Some comments asserted that EPA should have treated section 518 as a congressional delegation all along and argued that requiring tribes to demonstrate inherent authority to regulate under the CWA had imposed requirements not included in the statute and may have exceeded EPA's authority. EPA appreciates the commenters' support for the rule.

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[8] The dissent in *APS* also concluded that a separate provision of the CAA—section 110(o)—expressly delegates authority to eligible Indian tribes over their entire reservations for the specific CAA program addressed in that provision. *Id.* at 1301–02. Section 110(o) includes the key language cited by the dissent as indicative of express congressional delegations of authority to tribes over their reservations. *Id.*

[9] *Plan EJ 2014: Legal Tools,* Office of General Counsel, EPA, December 2011. See *http://www3.epa.gov/environmentaljustice/plan-ej/index.html.*

EPA also received comments from several other states, a local government, a local government association, two operating agents of industrial facilities, and one member of the public disagreeing with, or questioning, in whole or in part EPA's rationale for the revised interpretation of section 518. These comments assert that EPA's legal analysis does not support the change in statutory interpretation; that there has been no definitive court ruling on the proper interpretation of section 518; and that the judicial statements regarding section 518 that EPA cited in the proposal represent dicta and not actual court holdings on the CWA question. The comments also argue that the relevant CWA legislative history does not support the revised interpretation and note that Congress has been aware of EPA's prior interpretation since 1991 but has taken no action to correct it, notwithstanding that Congress amended section 518 in 2000. Commenters also point to a backdrop of U.S. Supreme Court case law addressing limitations on inherent tribal authority with regard to the activities of non-tribal members and assert that the revised interpretation would run counter to that line of jurisprudence. The comments also assert that differences between the CWA and CAA and between water and air quality issues support treating reservations differently under the two statutes.

EPA appreciates but disagrees with these comments. EPA recognizes that the various judicial statements supporting the Agency's interpretation of section 518 as a congressional delegation were not central to the holdings of the relevant cases. This is not surprising in light of the fact that EPA has not previously approved a TAS application based on this interpretation of section 518. Because EPA has premised its prior TAS approvals on demonstrations of inherent tribal regulatory authority, there would be no opportunity in the ordinary course of judicial review to join the open question regarding the proper interpretation of the statute. Nonetheless, the commenters undervalue the significance of the cited judicial statements. For instance, although the district court in *Montana* v. *EPA* did not need to decide the issue to uphold EPA's approval of the Salish and Kootenai Tribes' TAS application, the question of whether section 518 delegates authority to tribes was squarely presented and subjected to the court's careful analysis. The court reviewed the statutory language and legislative history and clearly articulated its view (albeit not its holding) that section 518 is properly interpreted as a delegation of authority to tribes. The D.C. Circuit also expressly considered section 518 during its review of the CAA tribal provision in *APS*, with the dissenting judge going so far as to cite the CWA as including the gold standard of statutory language to delegate authority to tribes over their reservations. EPA continues to view these statements as significant judicial guidance. EPA also continues to view the reference to section 518 in Justice White's opinion in *Brendale* as an important observation from the highest federal court that the CWA reflects congressional intent to delegate authority to tribes. EPA recognizes that the reference was not necessary to the plurality's opinion and that the opinion does not include an analysis of section 518. For these and other reasons, EPA opted to proceed cautiously in 1991 and await further guidance. But EPA's deliberate approach in no way discounts or diminishes the value of Justice White's statement toward a proper interpretation of section 518. Viewed as a whole, the various judicial statements regarding section 518 provide ample support for EPA's revised interpretation.

EPA is also aware of the separate Supreme Court jurisprudence addressing inherent tribal authority over nonmembers on Indian reservations. This is, of course, the same line of authority that EPA has previously applied when tribes sought to regulate the activities of nonmembers under the CWA. Retained inherent authority is, however, only one of the means by which tribes may exercise authority over their reservations and, in particular, over the activities of nonmembers. The Supreme Court has long recognized Congress' broad power to delegate authority to Indian tribes, including the authority to regulate the conduct of nonmembers of the tribes. *See, e.g., United States* v. *Mazurie,* 419 U.S. 544 (1975). Such delegations are neither inconsistent with, nor in opposition to, any limitations on retained tribal inherent authority. Instead, they are a proper exercise of Congress' plenary power under the U.S. Constitution with respect to Indian tribes. As with the CAA tribal provision, such delegations may be appropriately designed to address situations where Congress views coherent management of reservation resources by tribal governments as an appropriate means to carry out the purposes of a federal statute on Indian reservations. As noted above, EPA has long viewed the CWA tribal provision as expressing a congressional preference for tribal regulation of reservation water resources. EPA has now taken the related step of reconsidering and revising its interpretation of section 518 to reflect Congress' intent to delegate the requisite authority to tribes to effectuate such regulation.

EPA also acknowledges that the legislative history of section 518 is inconclusive regarding congressional intent to delegate authority to tribes. The commenters, however, overstate the degree to which the legislative record indicates an absence of such intent. EPA carefully analyzed this legislative history in the preamble to the 1991 WQS TAS rule and found that the record includes statements that can be interpreted to support either view. The absence of clarity in the record was among the reasons EPA opted to proceed initially with a high degree of caution and impose a requirement not otherwise reflected in the CWA that tribes demonstrate inherent authority to regulate under the statute. Notably, in 1996 the district court in *Montana* v. *EPA* also reviewed this legislative history and, while observing that the record may be ambiguous, reasoned that it was only arguably so because the bulk of the congressional statements were actually collateral to the issue and addressed the separate question of whether section 518 affected tribal water quantity rights (which it does not). More importantly, the key to a congressional delegation of authority is found in the express language of the statute, and not between the lines of recorded statements of particular congressional members. In relevant part, section 518(e) requires only that the CWA functions to be exercised by an applicant tribe pertain to reservation water resources, and section 518(h)(1) then uses the "gold standard" language to define such reservations to include all reservation lands irrespective of ownership. This language expresses clear congressional intent to delegate authority without any separate requirement that applicant tribes meet an additional jurisdictional test.

EPA also finds the absence of any action by Congress to correct EPA's prior cautious approach to be unpersuasive on the issue of congressional intent. No amendment to the statute was needed to reflect Congress' intent, since the language of section 518 already expressly delegates authority to tribes. EPA is also unaware of any request considered by Congress to revise section 518 with regard to this question or otherwise apprise EPA of its intent to delegate authority. Further, although EPA's prior interpretation has resulted in some additional burdens and delays in processing TAS applications, EPA has never disapproved a CWA TAS application based on an absence of tribal regulatory authority (or for any other reason), and thus has never taken an action directly inconsistent with Congress' intent to delegate authority to tribes. In these circumstances, it would be inappropriate to interpret congressional inaction as a ratification of EPA's prior approach to section 518.

Further, the fact that Congress in 2000 enacted a separate targeted amendment to section 518 to make a newly created program available to tribes without also addressing tribal regulatory authority sheds no light on the question. In 2000, Congress enacted the coastal recreation water quality monitoring and notification provision at section 406 of the CWA and also provided that tribes should be able to obtain TAS for that program. The fact that Congress did not further amend the statute at that time to address tribal regulatory authority is unrevealing regarding its prior intent in 1987 to delegate authority to tribes. For the reasons described above, there was no substantial cause for Congress to address tribal jurisdiction at that time. In addition, the legislative history of the 2000 amendment is consistent with Congress' narrow purpose to insert section 406 into the list of programs identified in section 518 for potential TAS. It does not indicate any consideration of the issue of tribal regulatory authority. Further, CWA section 406 establishes a funding and monitoring program. It does not entail the exercise of any regulatory authority by states or tribes. It would have been highly anomalous for Congress to address tribal regulatory authority as an adjunct to establishing a TAS opportunity for a non-regulatory program. In these circumstances, EPA declines to interpret congressional inaction as a tacit approval or adoption of EPA's prior approach to tribal authority.

Finally, EPA continues to view the analogy between CWA and CAA regulation, and between the tribal provisions of the two statutes, as supportive of today's rule. Although there are differences between the two statutes and their relevant histories, both evince a clear congressional intent (only three years apart) to treat Indian reservations holistically and to provide for tribal regulation of mobile pollutants on reservations irrespective of land ownership. The CAA, which authorizes TAS over both reservation and non-reservation lands, expresses the delegation of authority by distinguishing between those two categories and clearly placing reservations within tribal jurisdiction. The CWA authorizes TAS solely for reservations. The statute is thus somewhat more limited in the geographic scope of potential TAS, but, as a result, it more directly expresses the delegation of authority over the covered reservation areas. Section 518(e)(2) requires only that the tribal program pertain to reservation water resources, and section 518(h)(1) unambiguously defines reservations to include all reservation land notwithstanding ownership. EPA also disagrees with a comment suggesting that differences between airsheds and watersheds within Indian reservations support treating the two statutes' tribal provisions differently. In particular, the comment notes that watersheds can have defined beds and banks that cross lands with disparate ownership patterns. EPA notes that the same is essentially true of airsheds, which cover reservation lands without regard to ownership. As noted by the district court in *Montana* v. *EPA,* the congressional delegation of authority to tribes thus comports with common sense by avoiding checkerboarded regulation within a reservation based on land ownership. *Montana* v. *EPA,* 941 F. Supp. At 951–52.

B. EPA and Tribal Experience in Processing TAS Applications for CWA Regulatory Programs

Based on EPA's experience to date, the TAS application process has become significantly more burdensome than EPA anticipated in 1991. Many authorized tribes have informed EPA that the demonstration of inherent tribal authority, including application of the test established in *Montana* v. *U.S.* regarding tribal inherent authority over the activities of non-tribal members on nonmember fee lands, constituted the single greatest administrative burden in their application processes.

In the 1991 TAS rule, EPA expressed its expert view that given the importance of surface water to tribes and their members, the serious nature of water pollution impacts, and the mobility of pollutants in water, applicant Indian tribes would generally be able to demonstrate inherent regulatory authority to set WQS for reservation waters, including as applied to nonmembers on fee lands under federal Indian law principles. *Id.* at 64877–79. In light of the Agency's generalized findings regarding the relationship of water quality to tribal health and welfare, EPA noted that a tribe could likely meet the *Montana* test by making a relatively simple factual showing that (1) there are waters within the subject reservation used by the tribe or its members, (2) the waters are subject to protection under the CWA, and (3) impairment of the waters by nonmember activities on fee lands would have serious and substantial effects on tribal health and welfare. *Id.* at 64879. EPA thus anticipated in the early 1990s that applicant tribes would face a relatively simple initial burden of supplying basic facts to demonstrate that they retain requisite inherent authority to regulate under the CWA—including regulation of nonmember activities on fee lands—under established federal Indian law principles. *Id.*

Unfortunately, EPA's expectations have not, as a general matter, been realized. Although each TAS application has varied according to the particular facts and circumstances of the applicant tribe and its reservation, the general experience confirms that demonstrations of inherent regulatory authority continue to impose unintended administrative burden on applicant tribes and to require substantial commitments of limited tribal and federal resources. In particular, the demonstration of inherent authority over nonmember activities on the reservation under the so-called *Montana* test has created the most significant and widespread burden and at the same time provides no information necessary for EPA's oversight of the regulatory program. Tribes have repeatedly expressed their concern that the demonstration of inherent authority on a case-by-case basis is challenging, time consuming and costly. EPA's information about the tribes that it has found eligible to administer WQS and section 401 certifications indicates that tribal applications for reservations with nonmember fee lands, which require an analysis of tribal inherent authority under *Montana,* took 1.6 years longer to be approved, on average, than applications for reservations without such lands.

The elimination of such unintended administrative burdens does not, in itself, provide a legal rationale to alter EPA's interpretation of section 518.

However, streamlining a TAS process that has become unnecessarily restrictive and burdensome does offer a strong policy basis for the Agency to take a careful second look at that provision and to consider—as it contemplated as early as 1991—whether intervening events have shed additional light on the appropriate statutory interpretation. Eliminating such unnecessary burdens is consistent with longstanding EPA and Executive policy to support tribal self-determination and promote and streamline tribal involvement in managing and regulating their lands and environments. *See, e.g.,* Executive Order 13175 (65 FR 67249, November 9, 2000); Presidential Memorandum: Government-to-Government Relations with Native American Tribal Governments (59 FR 22951, April 29, 1994); EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984).

As explained in section III, EPA has long interpreted the CWA as expressing Congress' preference for tribal regulation of reservation surface water quality. *See, e.g.,* 56 FR at 64878. As explained in section IV.A, relevant developments definitively confirm that section 518 includes an express delegation of authority by Congress to eligible tribes to regulate water resources under the CWA throughout their entire reservations.

V. EPA's Revised Statutory Interpretation

A. What does today's revised interpretation provide and why?

EPA today revises its interpretation of CWA section 518 and concludes definitively that Congress expressly delegated authority to Indian tribes to administer CWA regulatory programs over their entire reservations, including over nonmember activities on fee lands within the reservation of the applicant tribe, subject to the eligibility requirements in section 518. In doing so, EPA thus exercises the authority entrusted to it by Congress to implement the CWA TAS provision.

The effect of this interpretive rule is to relieve a tribe of the need to demonstrate its inherent authority when it applies for TAS to administer a CWA regulatory program. An applicant tribe still needs to meet all other eligibility requirements specified in CWA section 518 and EPA's implementing regulations. Nonetheless, this rule eliminates any need to demonstrate that the applicant tribe retains inherent authority to regulate the conduct of nonmembers of the tribe on fee lands under the test established by the Supreme Court in *Montana* v. *U.S.* Instead, an applicant tribe can generally rely on the congressional delegation of authority in section 518 as the source of its authority to regulate its entire reservation under the CWA without distinguishing among various categories of on-reservation land. The tribe may, however, need to supply additional information to address any potential impediments to the tribe's ability to effectuate the delegation of authority.

EPA bases its revised interpretation of CWA section 518 on its analysis in section IV above and a careful consideration of comments received. Most importantly, EPA's revised interpretation is based on the plain text of section 518 itself. Section 518(e)(2) requires only that the functions to be exercised by the applicant Indian tribe pertain to the management and protection of water resources "within the borders of an Indian reservation." Section 518(h)(1) then defines the term "federal Indian reservation" to include all lands within the limits of any Indian reservation notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. That definition is precisely the same language that the dissent in *APS* stated is the "gold standard" for an express congressional delegation of regulatory authority to tribes over their entire reservations. *APS,* 211 F.3d at 1302–03. It is also the language that the U.S. Supreme Court reviewed in finding congressional delegations to tribes in other cases. *United States* v. *Mazurie,* 419 U.S. 544 (1975) (delegation of authority to tribes regarding regulation of liquor); *Rice* v. *Rehner,* 463 U.S. 713 (1983) (same). Although the legislative history of section 518 has, of course, remained unaltered since 1987, the plain language of the statute and the above-described developments provide ample support for the revised interpretation.

As EPA explained in section IV.A in connection with the CAA, such a territorial approach that treats Indian reservations uniformly promotes rational, sound management of environmental resources that might be subjected to mobile pollutants that disperse over wide areas without regard to land ownership. *See* 59 FR at 43959. As specifically recognized by the district court in *Montana* v. *EPA,* the same holds true for regulation under the CWA. *Montana,* 941 F. Supp. at 952.

B. What other approaches did EPA consider?

EPA considered not revising its 1991 interpretation of section 518. EPA did not choose this option because it would continue to impose an unnecessary requirement on applicant tribes not specified in the CWA to demonstrate inherent authority, including meeting the *Montana* test regarding activities of nonmembers on their reservation fee lands, when they apply to regulate under the statute.

EPA also considered revising the text of existing TAS regulations for CWA regulatory programs to alter tribal application requirements in light of the revised interpretation. In particular, EPA considered revising the requirements relating to tribal submissions of statements addressing jurisdiction as well as the procedures for states and other appropriate entities to comment on tribal assertions of authority. Had EPA decided to revise its regulations, EPA would have issued a legislative rule revising the TAS application provisions in the Code of Federal Regulations. However, EPA rejected this approach as both unnecessary and counterproductive. As described in section V.C.6, EPA concludes that the existing regulations are appropriately structured to accommodate the revised interpretation and that the procedures requiring tribal legal statements and providing opportunities for notice and comment continue to serve important purposes. Among other things, such procedures ensure that applicant tribes will continue to adequately address the reservation boundaries within which they seek to regulate under the CWA as well as any potential impediments that may in some cases exist to their ability to accept or effectuate the congressional delegation of authority. Retaining the notice and comment requirements will also ensure that states and other appropriate entities continue to have an opportunity to interact with EPA on these issues and that EPA's decision making on individual TAS applications is well informed.

Because today's interpretive rule merely explains EPA's revised interpretation of existing statutory requirements established in the CWA tribal provision—and does not make any changes to the existing regulations—an interpretive rule is the appropriate vehicle to announce EPA's revised approach.

Consideration of Comments

One state commented that EPA must use a legislative rulemaking process because the revised interpretation will eliminate the existing regulatory requirement that applicant tribes submit a statement addressing their jurisdiction and will affect states' opportunity under the regulations to comment on tribal jurisdiction. A local government also expressed concern with EPA's statement in the proposal that the interpretive rule is not subject to notice and comment requirements of the Administrative Procedure Act.

EPA disagrees that a legislative rulemaking is required to issue the revised interpretation. As noted above, EPA has decided not to revise any existing TAS application regulations published in the Code of Federal Regulations. Contrary to the state commenter's assertion, EPA specifically decided to retain the regulatory requirements relating to tribal jurisdictional statements and states' opportunity to comment on such assertions. Although EPA could reasonably have chosen to revise or eliminate aspects of these regulations, EPA has concluded that requiring applicant tribes to submit relevant jurisdictional information and allowing states and other appropriate entities to comment on such submissions will continue to ensure that any reservation boundary or other relevant jurisdictional issues are raised during a well-informed decision making process.

Importantly, although this interpretive rule is not subject to notice and comment requirements of the Administrative Procedure Act, EPA decided to provide notice and an opportunity for comment—in addition to other pre- and post-proposal outreach to tribes, states, and the public—to increase transparency and to allow interested parties to provide their views. EPA received comments on the proposal and has considered them in developing today's rule. A member of the academic community expressly supported EPA's use of an interpretive rule as the appropriate administrative mechanism to publish the revised interpretation. EPA appreciates that support.

C. What is EPA's position on certain public comments and tribal and state input?

In this section, EPA responds to several specific topics that were raised in public comments on EPA's proposal and in earlier input received from tribes and states during pre-proposal and post-proposal outreach.

1. Geographic Scope of TAS for Regulatory Programs

EPA's final rule does not affect—either by expanding or contracting—the geographic scope of potential tribal TAS eligibility under the CWA. Under section 518, tribes can only obtain TAS status over waters within the borders of their reservations. *See, e.g.*, 56 FR at 64881–82. Thus, under any approach to tribal regulatory authority under the CWA, tribal TAS eligibility under the CWA is limited to managing and protecting water resources within Indian reservations. Tribes can seek TAS with respect to water resources pertaining to any type of on-reservation land, including, for example, reservation land held in trust by the United States for a tribe, reservation land owned by or held in trust for a member of the tribe, and reservation land owned by non-tribal members. Conversely, tribes cannot obtain TAS under the CWA for water resources pertaining to any non-reservation Indian country[10] or any other type of non-reservation land.[11] Today's rule does not alter that basic limitation of TAS under the CWA.

Consideration of Comments

EPA received comments from several local governments seeking clarification of the geographic scope of TAS for CWA regulatory purposes and in particular noting that some reservations have complex histories of congressional treatment, including the opening of reservations to non-Indian settlement through surplus land acts. The commenters assert that each surplus land statute must be analyzed individually to determine whether it has altered the land status of the subject reservation and note that in some cases such statutes may result in situations where certain lands are taken out of reservation status, even though they remain surrounded by the original exterior boundaries of a reservation. The commenters request that EPA define the fee-owned lands that may be covered by a TAS application to exclude lands settled by non-tribal members pursuant to a federal surplus land act. One tribal commenter noted that there may be non-reservation inholdings that are surrounded by reservation lands and disagreed with EPA's approach of requiring that all lands subject to TAS for CWA regulatory purposes qualify as Indian reservation land. A state commenter agreed with EPA that reservation boundaries remain a relevant issue for tribal TAS applications and noted that EPA's revised interpretation would not reduce any burdens associated with resolving such issues.

EPA notes that any issues regarding the geographic scope of TAS under the CWA are outside the scope of this interpretive rule. As noted above and in the proposal, the revised interpretation does not alter in any way EPA's longstanding approach to the limitation of TAS in CWA section 518 to lands that qualify as reservation lands. This basic geographic land status limitation exists irrespective of whether tribes must demonstrate inherent authority to regulate under the CWA or whether they may rely on the congressional delegation of authority in section 518.

EPA appreciates the local governmental commenters' questions and understands that some Indian reservations may have complicated histories and that reservation boundaries may be altered by congressional act. EPA agrees that any such issue would need to be addressed on a reservation-specific basis and that each relevant surplus lands statute would need to be evaluated individually. Such issues would thus be raised and addressed only in the context of a particular TAS application from a specific tribe. To provide additional clarity, however, EPA reiterates as a general matter that any land subject to TAS approval for CWA regulatory purposes must qualify as Indian reservation land as defined in CWA section 518(h)(1). Thus, consistent with EPA's longstanding approach, any non-reservation land could not be included in a CWA TAS approval even if it is surrounded by other land that does qualify as reservation. Any land located within the original exterior boundaries of a reservation that has lost its reservation status by virtue of an act of Congress could thus not be included in a CWA TAS approval. EPA has never approved CWA TAS over such non-reservation land, and would have no authority to do so. EPA thus disagrees with the tribal commenter that non-reservation inholdings may be included in a TAS approval under the CWA. This limitation is imposed in the statute, and nothing in today's final rule alters or affects EPA's approach on this issue. EPA does not believe, however, that the Agency should establish a separate definition for "fee lands" that may be included in a CWA TAS application. Section 518(h)(1) of the CWA already provides the applicable definition of federal Indian reservations for purposes of the statute, and there is no need for an additional definition. Further, as noted by the commenters, each surplus land act must be viewed on its own terms and in light of its own history and treatment. It would thus be inappropriate to establish a single one-size-fits-all approach to lands that have passed to non-tribal members pursuant to such a statute. Only where such lands are determined to have lost their reservation status would they be outside the scope of TAS under the CWA. EPA also agrees with the state commenter that any issues relating to reservation boundaries will remain relevant to the TAS application process. Although today's rule does not reduce any burdens associated with resolving such issues, it also does not increase any such burdens. The need for tribes to demonstrate their reservation boundaries as part of a TAS application is beyond the scope of—and is not affected by—today's rule.

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[10] Indian country is defined at 18 U.S.C. 1151 as: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Indian reservations are thus a subset of the broader geographic area that comprises Indian country as a whole.

[11] Many tribes have rights to hunt, fish, gather resources, or perform other activities in areas outside of their reservations. To the extent the lands on which these rights are exercised are not Indian reservation lands as defined at 18 U.S.C. 1151(a), tribes cannot obtain TAS under the CWA for water resources pertaining to such lands.

2. Treatment of Tribal Trust Lands

Today's revised interpretation does not alter EPA's longstanding approach to tribal trust lands. Indian reservations include trust lands validly set aside for Indian tribes even if such lands have not formally been designated as an Indian reservation. Many named Indian reservations were established through federal treaties with tribes, federal statutes, or Executive Orders of the President. Such reservations are often referred to as formal Indian reservations. Many tribes have lands that the United States holds in trust for the tribes, but that have not been formally designated as reservations. Under EPA's longstanding approach, and consistent with relevant judicial precedent, such tribal trust lands are informal reservations and thus have the same status as formal reservations for purposes of the Agency's programs. *See, e.g.,* 56 FR at 64881; 63 FR at 7257–58; *APS,* 211 F.3d at 1292–94. Tribes have always been able to seek TAS over such tribal trust lands for CWA purposes (several tribes have done so previously), and nothing in today's revised interpretation alters or affects their ability to do so.

Consideration of Comments

One state commenter requested additional clarification regarding the treatment of tribal trust lands for CWA TAS purposes, and in particular inquired whether tribal trust lands outside the borders of a tribe's formal reservation would be included in the statute's definition of reservation. Although this issue is outside the scope of—and is not affected by—today's interpretive rule, EPA welcomes the opportunity to provide further clarity. EPA notes that some tribes may have tribal trust lands in addition to, and separate from, a formal reservation. For other tribes, such tribal trust lands may constitute the tribe's entire reservation land base. In either case, the tribal trust lands qualify as reservation lands for CWA TAS purposes. All such lands are thus within the borders of an Indian reservation for purposes of the statute.

3. Tribal Criminal Enforcement Authority

EPA's revised statutory interpretation does not affect any existing limitations on tribal criminal enforcement authority. This interpretive rule relates solely to applicant Indian tribes' civil regulatory authority to administer CWA regulatory programs on their reservations; it does not address or in any way alter the scope of tribal criminal enforcement jurisdiction. EPA is aware that federal law imposes certain significant limitations on Indian tribes' ability to exercise criminal enforcement authority, particularly with regard to non-Indians. EPA has previously established regulations addressing implementation of criminal enforcement authority on Indian reservations for those CWA programs that include potential exercises of such authority. *See, e.g.,* 40 CFR 123.34, 233.41(f). These regulations provide that the federal government will retain primary criminal enforcement responsibility in those situations where eligible tribes do not assert or are precluded from exercising such authority.

Consideration of Comments

Two industry commenters asserted that the limitations on a tribe's authority to impose the criminal sanctions that are specified as potential penalties in the CWA render the tribe unable to demonstrate that it is capable of carrying out required program functions for purposes of TAS eligibility. This issue is outside the scope of—and is not affected by—today's interpretive rule. As noted above, this rule addresses only the civil regulatory authority of applicant tribes. The rule also does not address the capability element of TAS eligibility under the CWA. Nonetheless, EPA notes that it disagrees with the commenters' assertion—which, if correct, would presumably preclude any tribe from demonstrating TAS eligibility for a CWA regulatory program that includes a criminal enforcement component. As described above, EPA's existing TAS regulations provide that the federal government will exercise primary criminal enforcement authority where tribal authority is limited or precluded. These regulations were promulgated to avoid precisely the outcome asserted by the commenters. The regulations have been in place for decades, and they are unaffected by today's interpretive rule.

EPA also disagrees with the commenters' assertion that the absence of any statutory language in section 518 addressing the limitations on tribal criminal authority is an indication that Congress did not intend to delegate authority to Indian tribes. EPA notes that the limitations on tribal criminal enforcement originate in legal principles established separate and apart from the CWA. Therefore, if the commenters were correct, Indian tribes could never demonstrate authority—whether inherent or congressionally delegated—to administer a CWA program that includes a criminal enforcement component without some statement in the statute affirming or otherwise addressing the exercise of criminal authority. Because the statute contains no such statement, this would render TAS impossible even under EPA's prior interpretation, and would thus make the CWA TAS provision internally inconsistent and in significant part a nullity. Under the commenters' approach, section 518 would, on the one hand, authorize TAS for programs that include criminal enforcement, while simultaneously precluding such TAS by virtue of an absence of congressional explanation of how criminal enforcement will be exercised. EPA disagrees that this could reflect Congress' intent. EPA also notes that the Agency has already interpreted the CAA tribal provision as including a congressional delegation of civil regulatory authority to tribes over their entire reservations, and that interpretation has been upheld in court. Like the CWA, the CAA authorizes TAS for programs that include a criminal enforcement component without separately addressing the exercise of such authority during program implementation. Under both statutes, EPA has exercised its authority to address this programmatic issue through long-established regulations that retain primary criminal enforcement with the federal government.

4. Special Circumstances

There could be rare instances where special circumstances limit or preclude a particular tribe's ability to accept or effectuate the congressional delegation of authority over its reservation. For example, there could be a separate federal statute establishing unique jurisdictional arrangements for a specific state or a specific reservation that could affect a tribe's ability to exercise authority under the CWA. It is also possible that provisions in particular treaties or tribal constitutions could limit a tribe's ability to exercise relevant authority.[12]

The application requirements of existing CWA TAS regulations already provide for tribes to submit a statement of their legal counsel (or equivalent official) describing the basis for their assertion of authority. The statement can include copies of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, resolutions, etc. *See* 40 CFR 131.8(b)(3)(ii); 123.32(c); 233.61(c)(2). Under today's rule, the requirement for a legal counsel's statement continues to apply and ensures that applicant tribes appropriately rely on the congressional delegation of authority and provide any additional information that could be relevant to their ability to accept or effectuate the delegated authority. As described below in section V.C.6, existing CWA TAS and program regulations also continue to provide appropriate opportunities for other potentially interested entities—such as states or other Indian tribes adjacent to an applicant tribe—to comment on an applicant tribe's assertion of authority and, among other things, inform EPA of any special circumstances that they believe could affect a tribe's ability to regulate under the CWA.

Consideration of Comments

EPA received several comments asserting that special circumstances limit particular tribes' ability to obtain TAS to regulate under the CWA. For instance, one state asserted that the tribes located within the state are precluded under federal laws specific to those tribes from obtaining TAS for CWA regulatory programs. Another state asserted that a tribe located within the state is precluded by a federal statute specific to that tribe from regulating reservation land that is owned in fee by nonmembers of the tribe. The state noted that if that tribe applied to regulate such fee lands, the state would avail itself of the opportunity under EPA's regulations to submit comments and would assert that the cited federal law affects the tribe's ability to exercise such authority. One local government commented that the geographic extent of a tribe's governing authority does not include the local government and provided historical information intended to support its position. And two industry commenters asserted that the tribe upon whose reservation they are located has entered into binding agreements waiving the tribe's right to regulate the commenters' facilities, thus rendering the tribe unable to obtain TAS for CWA regulatory programs over those facilities.

EPA appreciates the information about special circumstances provided in these comments. Importantly, the precise outcome of any such circumstance could only be determined in the context of a particular tribe's TAS application and upon a full record of information addressing the issue. The substance of these specific situations is thus outside the scope of—and is not affected by—today's rule. However, the comments are both illustrative and instructive regarding the types of special circumstances and jurisdictional issues that may affect a tribe's ability to carry out the congressional delegation of authority in the CWA tribal provision. Other federal statutes may, for instance, limit a particular tribe's or group of tribes' ability to participate, in whole or in part, in CWA regulation through the TAS process. In addition, before approving a tribe's TAS eligibility, EPA would carefully consider whether any binding contractual arrangements or other legal documents such as tribal charters or constitutions might affect the tribe's regulatory authority generally, or with regard to any specific members of the regulated community. Finally, the geographic scope of the reservation boundaries over which a tribe asserts authority would continue to be a relevant and appropriate issue for consideration in the TAS process. As explained elsewhere, EPA's existing TAS regulations require applicant tribes to address these types of issues in their jurisdictional statements and provide states and other appropriate entities the opportunity to comment and inform EPA of any potential impediments to tribal regulatory authority. These comment opportunities help ensure that EPA's decision making is well informed. Additional available information regarding certain of these special circumstances is provided in EPA's Response to Comments document included in the docket for this rule.

During pre-proposal outreach and again following proposal of the rule, EPA received comments from the State of Oklahoma regarding section 10211(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109–59, 119 Stat. 1144 (August 10, 2005). Because this provision of federal law expressly addresses TAS under EPA's statutes, including the CWA, EPA explained in the proposal that section 10211(b) established a unique TAS requirement with respect to Indian tribes located in the State of Oklahoma. Under section 10211(b), tribes in Oklahoma seeking TAS under a statute administered by EPA for the purpose of administering an environmental regulatory program must, in addition to meeting applicable TAS requirements under the EPA statute, enter into a cooperative agreement with the state that is subject to EPA approval and that provides for the tribe and state to jointly plan and administer program requirements. This requirement of SAFETEA exists apart from, and in addition to, existing TAS criteria, including the TAS criteria set forth in section 518 of the CWA. Today's rule relates solely to the interpretation of an existing CWA TAS requirement; it thus has no effect on the separate TAS requirement of section 10211(b) of SAFETEA. In its comments on the proposal, the State of Oklahoma requested additional information regarding the process or sequence of events that will be used to ensure that this provision of SAFETEA is satisfied in the context of particular tribal TAS applications that may be submitted following finalization of today's interpretive rule. EPA notes that section 10211(b) expressly contains certain procedural requirements—*i.e.*, the state/tribal cooperative agreement must be subject to EPA review and approval after notice and an opportunity for public hearing. Nothing in today's rule alters or affects those requirements. Further, because the SAFETEA requirement must be satisfied for a tribe in Oklahoma to obtain TAS to regulate under an EPA statute, the final cooperative agreement must be fully executed and approved by EPA before EPA can approve a regulatory TAS application. Because the State of Oklahoma is a required signatory to the agreement, this sequence of events ensures that the State will have a full opportunity to participate in the TAS process—separate and apart from opportunities that states have through EPA's existing TAS notice and comment procedures. Nothing in today's interpretive rule alters or affects Oklahoma's participation in the SAFETEA cooperative agreement or the requirement that the agreement be in place as a prerequisite to TAS for a regulatory program. EPA notes that there are no regulations establishing procedures for the State and applicant tribes to negotiate SAFETEA cooperative agreements or for tribes to submit, and EPA to review, such agreements. There is thus flexibility for the State and applicant tribes in Oklahoma to work together to develop these agreements as they deem appropriate.

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[12] EPA takes no position in this interpretive rule regarding whether any particular tribe or Indian reservation is subject to any potential impediment relating to effectuation of the congressional delegation of regulatory authority or how the CWA can be interpreted vis-à-vis the alleged source of any such impediment. Any such issue would need to be addressed on a case-by-case basis and with the benefit of a full record of relevant information that would be developed during the processing of a particular TAS application. To the extent EPA is ever called upon to make a decision regarding this type of issue, such a decision would be rendered in the context of EPA's final action on a specific TAS application, and any judicial review of that decision would occur in that context.

5. Tribal Inherent Regulatory Authority

With today's rule, EPA is not intending to assess the extent of tribal inherent regulatory authority. As the Agency clearly articulated in the TAS rules identified in section II.B, the importance of water resources to tribes, the serious potential impacts of water pollution on tribes' uses of their waters, and the mobility of pollutants in water all strongly support tribes' ability to demonstrate their inherent authority to regulate surface water quality on their reservations, including the authority to regulate nonmember conduct on fee lands under the Supreme Court's test established in *Montana.* Consistent with its 1991 interpretation of section 518, EPA concluded that each of the tribes it has approved for TAS for CWA regulatory programs has demonstrated its inherent regulatory authority and has demonstrated that the functions it sought to exercise pertain to the management and protection of reservation water resources. All Agency CWA TAS determinations challenged in court have been upheld.

Today's rule does not affect these prior TAS approvals. The rule does, however, modify EPA's approach going forward to be consistent with Congress' intent to delegate civil regulatory authority to eligible tribes. It relieves tribes of the administrative burden associated with demonstrating their inherent regulatory authority in the TAS application process. It does not, however, alter EPA's prior views regarding the extent of tribal inherent regulatory authority.[13]

Consideration of Comments

All of the tribal commenters fully support EPA's interpretive rule. Several tribes also noted their view that tribes possess inherent authority to regulate the quality of their reservation waters. EPA appreciates these comments and reiterates that today's revised interpretation of the CWA tribal provision is intended solely to effectuate the plain intent of Congress to delegate civil authority to tribes to regulate water resources on their entire reservations under the CWA. Today's rule is not intended as an assessment of the scope of retained tribal inherent authority.

Several state, local government, and industry commenters asserted that under federal law, tribal inherent regulatory authority over nonmembers of the tribe is limited and that the U.S. Supreme Court has consistently recognized and affirmed such limitations. The commenters appear to assert that such limitations argue against EPA's revised interpretation of the CWA tribal provision. EPA disagrees. EPA is aware of Supreme Court jurisprudence addressing retained tribal inherent regulatory authority, particularly with regard to such authority as applied to non-tribal members. However, as described above in sections IV and V.A, federal law also recognizes Congress' authority to delegate jurisdiction to tribes to regulate throughout their reservations, including regulation of the activities of non-tribal members. A relevant reviewing federal court has already upheld EPA's interpretation that the Clean Air Act includes such a delegation, and the plain language of CWA section 518 supports the same approach. Issues regarding tribal inherent authority are distinct from EPA's interpretation of the express statutory language in section 518.

6. Existing Regulatory Requirements

Because today's revised statutory interpretation is consistent with existing CWA TAS regulatory requirements, EPA has not revised any regulatory text in the Code of Federal Regulations.

a. TAS Requirements

Consistent with today's rule, tribes will rely on the congressional delegation of authority in section 518 as the source of their authority to regulate water quality on their reservations. Under the TAS regulations identified in section II.B, tribes would still need to address and overcome any special circumstances that might affect their ability to obtain TAS for a CWA regulatory program (see section V.C.4), and the existing TAS application regulations require submission of a legal statement that would cover such issues. Apart from such special circumstances, the main focus in determining the extent of an applicant tribe's jurisdiction for CWA regulatory purposes will likely be identifying the geographic boundaries of the Indian reservation area (whether a formal or informal reservation) over which the congressionally delegated authority would apply.[14] EPA's existing CWA TAS regulations already provide for applicant tribes to submit a map or legal description of the reservation area that is the subject of the TAS application. *See* 40 CFR 131.8(b)(3)(i); 123.32(c); 233.61(c)(1); 501.23(c). These provisions continue to apply and ensure that each tribe applying for a CWA regulatory program submits information adequate to demonstrate the location and boundaries of the subject reservation.

The existing regulations also provide appropriate opportunities for potentially interested entities to comment to EPA regarding any jurisdictional issues associated with a tribe's TAS application. As mentioned in section II.B above, EPA's TAS regulations for the CWA section 303(c) WQS program include a process for notice to appropriate governmental entities—states, tribes and other federal entities located contiguous to the reservation of the applicant tribe—and provide an opportunity for such entities to provide comment on the applicant tribe's assertion of authority. EPA makes such notice broad enough that other potentially interested entities can participate in the process. 56 FR at 64884. For example, EPA routinely publishes notice of tribal TAS applications for the WQS program in relevant local newspapers covering the area of the subject reservation and in electronic media.

Consideration of Comments

EPA received comments from local governments requesting that EPA ensure direct notice to such governments of tribal TAS applications for the CWA WQS program. EPA appreciates that certain local governments may wish to comment on tribal assertions of authority to administer CWA WQS. However, any issues regarding the notice and comment process in EPA's TAS regulations for that program are beyond the scope of this interpretive rule, which addresses solely EPA's interpretation of section 518 as a congressional delegation of authority. EPA has retained the regulations governing the notice and comment process in their entirety and believes that the process provides appropriate notice to potentially interested entities in the area of an applicant Indian tribe's reservation. The process has proven to be effective in ensuring that relevant issues regarding tribal jurisdiction are raised to EPA during the TAS decision making process.

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[13] In promulgating the CAA Tribal Authority Rule, EPA similarly noted its view that even absent a direct delegation of authority from Congress, tribes would very likely have inherent authority over all activities within Indian reservation boundaries that are subject to CAA regulation. 59 FR at 43958 n.5.

[14] The jurisdictional inquiry into the geographic scope of a tribe's TAS application—*i.e.,* the boundary of the reservation area that a tribe seeks to regulate—imposes no additional burden on entities that wish to comment on an applicant tribe's assertion of authority. Under any approach to tribal regulatory authority, the geographic scope of the TAS application is a relevant jurisdictional consideration and thus an appropriate issue for potential comment during the TAS process. Commenters have, at times, raised such geographic issues in the context of previous TAS applications; EPA's rule does not alter the opportunity to do so for future applications, or any burden attendant to preparing and submitting such comments.

b. Relationship to Program Approvals

The existing TAS regulations and this rule relate solely to the applications of Indian tribes for TAS eligibility for the purpose of administering CWA regulatory programs. They do not provide substantive approval of an authorized tribe's actual CWA regulatory program. Each program has its own regulations specifying how states and authorized tribes are to apply for and administer the program.

EPA's TAS regulations for the CWA section 402, 404 and 405 permitting programs require an analysis of tribal jurisdiction as part of the program approval process under 40 CFR parts 123, 233 and 501 that are described in section II.B. As described in the Simplification Rule, EPA makes its decisions to approve or disapprove those programs as part of a public notice and comment process conducted in the **Federal Register**. 59 FR at 64340.

7. Effects on Tribal TAS Applications

Today's interpretive rule streamlines the TAS application and review process for tribes seeking eligibility to administer CWA regulatory programs. The rule significantly reduces the expected time and effort for tribes to develop and EPA to review TAS applications and could encourage more tribes to apply for TAS for CWA regulatory programs. As stated above (sections V.C.4 and V.C.6), applicant tribes would still need to identify their reservation boundaries and address any special circumstances potentially affecting their ability to effectuate the congressional delegation of authority and obtain TAS to regulate under the CWA.

Any EPA approval of a TAS application for a CWA regulatory program after May 16, 2016 will be based on the delegation of authority from Congress as the relevant source of authority supporting the tribe's eligibility. Any new tribal TAS application for a CWA regulatory program submitted after May 16, 2016 will need to be consistent with the interpretation of section 518 expressed in this rule. For any pending TAS application for CWA regulatory programs as of May 16, 2016, EPA will consult with the applicant tribe to assist it in amending its application if necessary to be consistent with this rule and to address any process issues.

8. Effects on EPA-Approved State Programs

EPA's rule has no effect on the scope of existing state regulatory programs approved by EPA under the CWA. Generally speaking, civil regulatory jurisdiction in Indian country lies with the federal government and the relevant Indian tribe, not with the states. *See, e.g., Alaska* v. *Native Village of Venetie Tribal Gov't,* 522 U.S. 520, 527 n.1 (1998). Therefore, in the absence of an express demonstration of authority by a state for such areas, and an EPA finding of that state authority for those Indian country waters, EPA has generally excluded Indian country from its approvals of state regulatory programs under the CWA.

The revised reinterpretation of section 518 relates solely to the exercise of jurisdiction by Indian tribes on their reservations; it has no effect on the scope of existing CWA regulatory programs administered by states outside of Indian country. It neither diminishes nor enlarges the scope of such approved state programs.

There are uncommon situations where a federal statute other than the CWA grants a state jurisdiction to regulate in areas of Indian country. For example, in a few cases EPA has approved states to operate CWA regulatory programs in areas of Indian country where the states demonstrated jurisdiction based on such a separate federal statute. This rule does not address or affect such jurisdiction that other federal statutes provide to states.

Regulations already exist to address circumstances where a state or tribe believes that unreasonable consequences could arise or have arisen as a result of differing WQS set by states and eligible Indian tribes on common bodies of water. Section 518(e) of the CWA required EPA to provide a mechanism to address such situations. The Agency did so at 40 CFR 131.7, which establishes a detailed dispute resolution mechanism. Today's rule does not affect that process; the process remains available as needed to address potential state/tribal issues.

Consideration of Comments

EPA received comments from several states, a local government, and a local government association regarding potential effects of the rule on state water quality programs. Some comments asserted that the rule would improperly displace existing state authority to protect water quality in certain Indian reservation areas—*e.g.,* lands owned in fee by nonmembers of a tribe, or submerged lands owned by the states. Related comments argued that the rule is unnecessary because the states are already implementing clean water programs over such areas. One state commenter also questioned whether the rule would preempt states' ability to apply state water quality laws, particularly with respect to non-tribal members on non-tribal land. Another state commenter cited separate federal statutes that grant the state environmental regulatory authority, including authority to administer CWA programs, in Indian territories, and asserted that the rule would therefore be unlawful in that state to the extent it could alter the jurisdictional arrangement of those other federal laws.

EPA appreciates these comments and wishes to further clarify the Agency's view that the revised interpretation announced today would not affect existing EPA-approved state programs or other state authorities. Importantly, it is EPA's position that the congressional delegation of jurisdiction in CWA section 518 relates solely to the authority of tribes to administer regulatory programs under the CWA. It does not address or affect (by enlarging or diminishing) the authority of any entity—tribe or state—to apply any water quality or other program established under its laws outside the scope of the federal CWA. Any question regarding whether a state has sufficient authority to apply such state laws to non-tribal members on their reservation fee lands (or to otherwise apply such laws on an Indian reservation), is outside the scope of today's rule and would be unaffected by the rule. EPA does not, for instance, view Congress' decision to delegate to tribes the authority to regulate their reservations under the CWA as increasing or altering tribal authority to implement any other tribal law or program—including non-CWA tribal water quality laws. Nor does EPA take the position that the congressional delegation of CWA jurisdiction to tribes serves to preempt application of any state law on an Indian reservation to the extent such state law is premised on authority found outside the CWA. EPA notes that the Agency has similarly taken no position that the congressional delegation of authority in the CAA tribal provision acts as a preemption of state authority to apply state air quality laws on Indian reservations to the extent such laws are outside the purview of the federal CAA. Issues regarding a state's authority to implement environmental quality programs on reservation fee (or other) lands where such programs are outside the scope of the federal statutes EPA administers are beyond the scope of EPA's oversight and are unaffected by today's rule.

With regard to state water quality programs approved by EPA under the CWA, EPA disagrees with the commenters' assertion that today's rule could affect or displace existing state authorities. As noted above, under principles of federal law, states generally lack authority to regulate on Indian reservations. EPA has thus generally excluded such lands from the Agency's approval of state programs submitted to EPA under the CWA (and other environmental laws administered by EPA). It is thus generally the case that states are not approved by EPA in the first instance to administer CWA regulatory programs on reservations. In most cases, therefore, there are no existing EPA-approved state CWA programs on reservations that could be affected or displaced by a congressional delegation of authority to Indian tribes.

States may apply to EPA for CWA program approval over reservation areas. In such cases, the state would need to demonstrate a source of regulatory authority premised in federal law. Such a demonstration would be needed irrespective of whether the reservation land at issue is owned by non-tribal members or by the state itself. In rare circumstances, EPA has in the past approved certain state CWA regulatory programs on Indian reservations. In each case, the relevant state's authority has been based on a separate federal statute expressly granting the state jurisdiction to regulate on the reservation. Today's rule does not affect such EPA-approved state programs or otherwise alter the apportionment of jurisdiction established in those other federal laws. Although each case must be assessed in light of its own statutory arrangement, EPA generally believes that CWA section 518 would not affect a separate statutory scheme that is specifically applicable to a particular state or tribe and that expressly provides for state environmental regulatory jurisdiction on Indian reservation lands and/or expressly precludes tribes from asserting such authority. This does not mean, as asserted by one state commenter, that today's rule would be unlawful in such a state. It simply means that the congressional delegation of authority in section 518 may be precluded by a separate federal law, with jurisdiction to administer CWA regulatory programs being granted to the state under that law. As described above in section V.C.4, EPA recognizes that such unusual circumstances may affect certain tribes' ability to effectuate the congressional delegation of authority or otherwise obtain TAS to regulate under the CWA. A situation where a separate federal law specifically apportions jurisdiction among a particular state and the tribe(s) located in such state could be one example of such a circumstance.

VI. How does the rule affect existing EPA guidance to tribes seeking to administer CWA regulatory programs?

As noted in section V.C.6, today's rule does not revise any regulatory text. However, it does render some of EPA's existing guidance obsolete. For example, parts of a 1998 memorandum to EPA staff (the "Cannon-Perciasepe Memorandum")[15] provided guidance for EPA's reviews of tribal assertions of inherent authority to administer CWA regulatory programs. Among other things, the memorandum established a case-by-case process for EPA to seek comments from appropriate governmental entities and the public on EPA's proposed factual findings relating to an applicant tribe's assertion of inherent authority over nonmember activities on reservation fee lands. Cannon-Perciasepe Memorandum, p. 6. The memorandum also provided detailed guidance for implementing the *Montana* test, which, as described above, relates to inherent tribal jurisdiction over nonmember activity. Cannon-Perciasepe Memorandum, Attachment C.[16] Because applicant tribes will no longer need to demonstrate inherent jurisdiction, these parts of the guidance are no longer relevant for TAS applications for CWA regulatory programs, and there is no further utility for EPA to develop or seek comment on factual findings relating to tribal inherent authority.

EPA intends to update its internal procedures and its training and guidance for applicant tribes to reflect these changes consistent with the express congressional delegation of authority to eligible tribes.

VII. Economic Analysis

This rule entails no significant cost. Its only effect will be to reduce the administrative burden for a tribe applying in the future to administer a CWA regulatory program, and to potentially increase the pace at which tribes seek such programs. See the discussion of administrative burden and cost in section VIII.B (Paperwork Reduction Act).

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This interpretive rule is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this interpretive rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2515.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

As discussed in section II.B, EPA's regulations require that a tribe seeking to administer a CWA regulatory program must submit information to EPA demonstrating that the tribe meets the statutory criteria described in section II.A. EPA requires this information in order to determine that the tribe is eligible to administer the program.

This rule streamlines the application by revising EPA's interpretation of section 518 to eliminate the need for an applicant tribe to demonstrate its inherent regulatory authority—

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[15] "Adoption of the Recommendations from the EPA Workgroup on Tribal Eligibility Determinations," memorandum from Assistant Administrator for Water Robert Perciasepe and General Counsel Jonathan Z. Cannon to EPA Assistant Administrators and Regional Administrators, March 19, 1998.

[16] The "Cannon-Perciasepe" approach and related guidance to tribes are also reflected in subsequent EPA materials, including portions of the "Strategy for Reviewing tribal Eligibility Applications to Administer EPA Regulatory Programs," memorandum from Deputy Administrator Marcus Peacock, January 23, 2008.

including demonstrating that it meets the *Montana* test where relevant—which had been an element of TAS applications not included in the statute. As described in the ICR, this rule reduces the burden by an estimated 583 staff hours for a typical tribe, or 27 percent, and reduces the cost of an application to a typical tribe for salaries and contractor support by an estimated $70,554 per tribe, or 39 percent.

Respondents/affected entities: Any federally recognized tribe with a reservation can potentially apply to administer a regulatory program under the CWA.

Respondent's obligation to respond: The information discussed in this rule is required from a tribe only if the tribe seeks to administer a CWA regulatory program. See EPA's regulations cited in section II.B of this rule.

Estimated number of respondents: The total potential pool of respondents is over 300 tribes with reservations. Although there are 567 federally recognized Indian tribes in the United States, the CWA allows only those tribes with reservations to apply for authority to administer programs. EPA estimates that about six tribes per year will apply for TAS for a CWA regulatory program following this rule, an increase from the existing rate of about four tribes per year. The pace of applications could increase after the first few years as tribes become more familiar with the post-rule process.

Frequency of response: Application by a tribe to be eligible to administer a CWA regulatory program is a one-time collection of information.

Total estimated burden: 9,642 tribal staff hours per year. Burden is defined at 5 CFR 1320.3(b). EPA's ICR analysis included all administrative costs associated with TAS applications even if some of the costs are not strictly information collection costs. EPA was unable to differentiate the information collection costs consistently and reliably from other administrative costs such as program development costs.

This estimate could overstate actual burden because (a) EPA assumed that all applications are first-time applications for CWA regulatory programs, and thus the tribes submitting them would be unable to rely on materials from previous applications for different regulatory programs; (b) EPA used a liberal estimate of the annual rate of tribal applications to ensure that the ICR does not underestimate tribal burden; and (c) EPA used a simplifying steady-state assumption in estimating annualized costs.

Total estimated cost: $674,946, including tribal staff salaries and the cost of contractors supporting tribal applicants. This rule does not entail capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this interpretive rule will not have a significant economic impact on a substantial number of small entities under the RFA. This rule will not impose any requirements on small entities. This rule affects only Indian tribes that seek to administer CWA regulatory programs.

D. Unfunded Mandates Reform Act (UMRA)

This interpretive rule does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This interpretive rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

This rule applies only to tribal governments that seek eligibility to administer CWA regulatory programs. Although it could be of interest to some state governments, it does not apply directly to any state government or to any other entity. As discussed in section V.C.8, the rule has no effect on the scope of existing state regulatory programs approved by EPA under the CWA.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA consulted with representatives of state governments to obtain meaningful and timely input before and after proposal for consideration in this rulemaking. By letter dated June 18, 2014, EPA invited ten national and regional state associations[17] to a July 8, 2014, informational meeting at EPA in Washington, DC. As a result of this meeting and other outreach, EPA participated in several follow-up meetings with interested associations and their members as well as certain individual states during the months of June–September, 2014. By letter dated August 7, 2015, to the same groups, EPA resumed consultation after the proposal, including conducting a webinar on September 3, 2015. Records of these meetings and copies of written comments and questions submitted by states and state associations are included in the docket for this rule.

In the public comments, two states expressed support for tribal opportunities to obtain TAS. Some participants disagreed with or questioned in whole or in part the Agency's rationale for the reinterpretation. Others questioned whether the proposal would affect the geographic scope of tribal authority under the CWA and how the proposal would affect a state's ability to challenge a tribe's application. Some states also had questions about issues unique to their situations.

EPA considered all of the state comments in developing this final interpretive rule. EPA's responses are included in sections IV and V of this rule and in the Response to Comments document in the docket for this rulemaking.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This interpretive rule has tribal implications because it will directly affect tribes applying in the future to administer CWA regulatory programs. However, because it neither imposes substantial direct compliance costs on federally recognized tribal governments, nor preempts tribal law, tribal consultation was not required by Executive Order 13175. In any event, EPA consulted and coordinated with tribal officials under the EPA Policy on Consultation and Coordination with

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[17] The National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the Western Governors Association, the Southern Governors Association, the Midwestern Governors Association, the Coalition of Northeastern Governors, the Environmental Council of the States, the Association of Clean Water Administrators, and the Western States Water Council. In May and June 2015, EPA held additional informational meetings with the state environmental chiefs of the National Association of Attorneys General, members of the legal network of the Environmental Council of the States, and member states of the Western Governors' Association.

Indian Tribes early in the process of developing this rule, and again after its proposal, to permit them to have meaningful and timely input into its development. A summary of that consultation and coordination follows.

EPA initiated a tribal consultation and coordination process before proposing this rule by sending a "Notification of Consultation and Coordination" letter on April 18, 2014, to all of the 566 then federally recognized tribes. EPA contacted all federally recognized tribes, even though only tribes with reservations can apply for TAS under the CWA, because it is possible that additional tribes could acquire reservation lands in the future. The letter invited tribal leaders and designated consultation representatives to participate in the tribal consultation and coordination process. EPA held two identical webinars concerning this matter for tribal representatives on May 22 and May 28, 2014. A total of 70 tribal representatives participated in the two webinars, and tribes and tribal organizations sent 20 pre-proposal comment letters to EPA. On August 7, 2015, EPA resumed the consultation and coordination process with tribes. A total of 44 tribal representatives participated in webinars in September 2015.

EPA received 21 comment letters from tribes and tribal associations during the public comment period. All tribal comments supported the proposal. Some tribes had questions about how EPA would handle reservation land status and boundary matters. Some comments urged EPA to help find solutions to tribal funding limitations. EPA will continue to consider tribal resource issues in its budgeting and planning process. However, EPA cannot assure tribes that additional funding will be available for a tribe to develop or implement a CWA regulatory program.

EPA considered all of the tribal comments in developing this interpretive rule. EPA's responses are included in sections IV and V of this rule and in the Response to Comments document in the docket for this rulemaking,

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This interpretive rule is not subject to Executive Order 13045 because it does not concern an environmental health or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This interpretive rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The human health or environmental risks addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This rule affects the procedures tribes must follow to seek TAS for CWA regulatory purposes and does not directly affect the level of environmental protection.

K. Congressional Review Act (CRA)

This interpretive rule is exempt from the CRA because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

Dated: May 5, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–11511 Filed 5–13–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 13–209, RM–11663; FCC 16–48]

Emission Mask Requirements for Digital Technologies on 800 MHz NPSPAC Channels; Analog FM Capability on Mutual Aid and Interoperability Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to guard against interference to critical public safety communications in the 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) band (806–809/851–854 MHz) and to enhance public safety system interoperability in the VHF, UHF and 800 MHz bands by specifying analog FM as the standard emission for use on all interoperability channels in these bands.

DATES: Effective June 15, 2016.

FOR FURTHER INFORMATION CONTACT: John A. Evanoff, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0848 or *john.evanoff@fcc.gov* and Brian Marenco, Electronics Engineer, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0838 or *brian.marenco@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in PS Docket No. 13–209, FCC 16–48, released on April 25, 2016. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

The *Report and Order* amends the rules to require digital technologies to comply with Emission Mask H when operated in the 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) band (806–809/851–854 MHz). The *Report and Order* also amends the rules to require equipment to have analog FM capability when operating on 800 MHz NPSPAC, VHF (150–170 MHz), and UHF (450–470 MHz) public safety mutual aid and interoperability channels. These rule changes will help safeguard public safety licensees in the NPSPAC band from adjacent-channel interference and preserve interoperability in the NPSPAC, VHF and UHF bands. Finally, the *Report and Order* terminates the existing freeze on equipment authorization announced in the *Public Notice,* 28 FCC Rcd 12661.

Procedural Matters

A. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix B of the *Report and Order.*

B. Paperwork Reduction Act of 1995 Analysis

The actions taken in the *Report and Order* in PS Docket No. 13–209 have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose no new or modified recordkeeping requirements or burdens on the public.

C. Congressional Review Act

The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), see 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rules

2. The basic purpose of the *Report and Order* is to amend the Part 90 technical rules in order to prevent adjacent channel interference and promote interoperable public safety communications. In the *Notice of Proposed Rulemaking* (*NPRM*) we proposed to adopt rules that guard against interference to critical public safety communications in the 800 MHz NPSPAC band and enhance public safety system interoperability in the VHF, UHF and 800 MHz bands. Most commenters submit that digital equipment should not be authorized in the NPSPAC band unless it complies with Emission Mask H because digital transmitters increase the potential for adjacent channel interference and reduce frequency reuse in the limited NPSPAC spectrum. Most commenters also believe that public safety radios should have analog FM capability when operating on the mutual aid and interoperability channels.

3. Based on the record, we conclude that the public interest will best be served by adopting the rules proposed in the *NPRM,* with certain changes that will reduce regulatory burdens on public safety entities and manufacturers. The rule changes adopted in this *Report and Order* provide certainty to public safety entities, regional planning committees (RPC), equipment manufacturers, and equipment certification laboratories, and will ensure that licensed facilities operate under uniform technical parameters to maintain the extant interference environment in the NPSPAC band and promote interoperability.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, we considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

5. First, our decision to apply the H Mask to digital technology is limited to equipment that operates in the sensitive interference environment of the NPSPAC band where 25 kilohertz channels are spaced only 12.5 kilohertz apart. We recognize that the NPSPAC channels are more susceptible to adjacent channel interference due to the 12.5 kilohertz channel spacing relative to the rest of the 800 MHz band where channels are spaced 25 kilohertz apart. Equipment not conforming to the H Mask would increase the potential for adjacent channel interference, require greater geographic separation to mitigate interference and thus reduce spectrum reuse of limited public safety spectrum. Thus, by amending the emission mask rules applicable to the NPSPAC band, we reduce the economic burden on public safety licensees in having to contend with increased adjacent channel interference and decreased spectrum availability.

6. Second, our decision to require analog FM common modulation capability promotes interoperability on the mutual aid channels and the VHF/UHF interoperability channels. In light of the embedded base of analog FM equipment on the mutual aid and VHF/UHF interoperability channels, we believe that requiring a common modulation scheme is a low-cost measure to ensure that these channels remain available during times of crisis.

7. Third, the record shows that the benefits to public safety users of requiring (1) digital technologies to comply with Emission Mask H when operating in the NPSPAC band and (2) equipment to have analog FM capability when operating on 800 MHz, VHF, and UHF public safety mutual aid and interoperability channels exceed the asserted costs of (1) compliance with Emission Mask H, and (2) providing analog FM capability. Additionally, public safety agencies that wish to use non-H Mask compliant digital emissions for non-interoperable communications may apply for authorizations in the 4.5 MHz of 800 MHz interleaved spectrum.

C. Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. Private Land Mobile Radio Licensees. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite).

10. The Wireless Telecommunications Carriers (except satellite) industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules for the category Wireless Telecommunications Carriers (except satellite) is that a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 such firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1000 employees. Thus, under this category and the associated small business size standard, the Commission estimates that

the majority of wireless telecommunications carriers (except satellite) are small.

11. The definition of the Wireless Telecommunications Carriers (except satellite) industry provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

12. As of November 1, 2012, there were 1,185 PLMR licensees operating in the PLMR band between 806–809/851–854 MHz (NPSPAC band) and 686 PLMR licensees operating on the VHF and UHF public safety interoperability channels. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

13. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the amended rules. As of 2009, small businesses represented 99.7% of the 28.2 million businesses in the United States, according to the SBA. Additionally, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

14. RF Equipment Manufacturers. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for the entire year. Of this total, 912 had employment of under 500, and an additional 10 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The *Report and Order* adopts two principal rule changes that will affect reporting, recordkeeping and other compliance requirements. The *Report and Order* retains our 800 MHz NPSPAC emission mask rules and explicitly requires digital emission transmitters to comply with Emission Mask H when operated on 800 MHz NPSPAC channels. The *Report and Order* also requires mobile and portable transmitters to have analog FM modulation capability on the public safety mutual aid and VHF/UHF interoperability frequencies. Digital emission transmitters have characteristics that differ from analog FM transmitters and, hence, have a greater likelihood of causing adjacent-channel interference. The Commission developed specific emission masks for digital emissions, including Mask H for digital emissions in the 800 MHz NPSPAC band. Industry practice recognizes that (1) digitally-modulated signals must be certified under the H-Mask for use in public safety spectrum and (2) radios intended for use on mutual aid and interoperability channels must be capable of analog FM operation. We expect that large and small manufacturers already comply with these proposed regulations. However, to the extent some manufacturers do not already comply with these regulations and industry standards, we expect that such manufacturers would refrain from marketing their equipment to public safety entities as being in compliance with the Commission's rules and ensure that their equipment performs consistent with these regulations designed to prevent interference and preserve interoperability. The Commission's equipment certification process will serve to ensure that equipment complies with Emission Mask H when operated in the NPSPAC band and that it has FM modulation capability on public safety mutual aid and VHF/UHF interoperability frequencies. Some manufacturers may submit new or amended applications for equipment certification accompanied by the requisite engineering showings that demonstrate compliance with the rules adopted in the *Report and Order.* See OMB Control No. 3060–0057.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

17. We have evaluated our rule changes in the context of small business entities and find no alternatives, to the benefit of small entities that would achieve our goals of adjacent channel interference avoidance and facilitating nationwide interoperability. Additionally, the rules we adopt are consistent with industry practice and reflect the embedded base of public safety equipment on these channels. Accordingly, we expect most manufacturers and public safety licensees already comply with our regulations, therefore minimizing any significant economic impact on small entities. We believe that these restrictions on adjacent channel interference and interoperability compliance requirements are the minimum needed, when weighed against the significant benefits to small entities, including public safety entities, that result from the approach we are adopting here. In order to further minimize the economic impact on small entities, the rules require analog FM

capability only in subscriber units in order to achieve interoperability.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

G. Report to Congress

19. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) is also being published in the **Federal Register**.

Ordering Clauses

20. Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 4(j), 301, 302, 303, 308, 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302, 303, 308, 309(j), and 332, that this *Report and Order* is hereby ADOPTED. Part 90 of the Commission's rules, 47 CFR part 90, is revised as set forth in Appendix A to this *Report and Order.* These rule revisions will take effect 30 days after the date of publication of the text thereof in the **Federal Register**.

21. *It is further ordered that* the equipment authorization freeze announced in the Public Notice, 28 FCC Rcd 12661, *shall be terminated* on the date the rule revisions as set forth in Appendix A become effective.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

23. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order,* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.
Gloria J. Miles,
Federal Register Liaison Officer, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.20 is amended by revising paragraph (d)(80) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(d) * * *

(80) After December 7, 2000 this frequency is available primarily for public safety interoperability only communications. Stations licensed prior to December 7, 2000 may continue to use this frequency on a co-primary basis until January 1, 2005. After January 1, 2005, all operations will be secondary to co-channel interoperability communications. Analog FM emission shall exclusively be used for operation on the VHF and UHF interoperability channels.

* * * * *

■ 3. Section 90.203 is amended by revising paragraphs (i) and (j)(1) to read as follows:

§ 90.203 Certification required.

* * * * *

(i) Mobile/portable equipment capable of use in the 806–809/851–854 MHz band segment and submitted for certification thirty or more days after publication of a summary of the *Report and Order,* (FCC 16–48, released April 25, 2016) in PS Docket 13–209 in the **Federal Register** must have the capability to operate in the analog FM mode on the mutual aid channels designated in § 90.617(a)(1) of the rules.

(j) * * *

(1) Applications for certification of mobile and portable equipment designed to transmit voice on public safety frequencies in the 150–174 MHz or 450–470 MHz band will be granted only if the mobile/portable equipment is capable of operating in the analog FM mode on the nationwide public safety interoperability channels in the 150–174 MHz band or 450–470 MHz band, as appropriate. (See § 90.20(c), (d)(80) of this part.)

* * * * *

■ 4. Section 90.210 is amended by adding footnote 6 to the entry for 806–809/851–854 in the Applicable Emission Masks table to read as follows:

§ 90.210 Emission masks.

* * * * *

APPLICABLE EMISSION MASKS

Frequency band (MHz)	Mask for equipment with audio low pass filter	Mask for equipment without audio low pass filter
* * * * *	*	*
806–809/851–854[6]	B	H
* * * * *	*	*
* * * * *	*	*

[6] Transmitters utilizing analog emissions that are equipped with an audio low-pass filter must meet Emission Mask B. All transmitters utilizing digital emissions and those transmitters using analog emissions without an audio low-pass filter must meet Emission Mask H.

■ 5. Section 90.617 is amended by revising paragraph (a)(1) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(a) * * *

(1) Channels numbers 1–230 are also available to eligible applicants in the Public Safety Category in non-border areas. The assignment of these channels

will be done in accordance with the policies defined in the Report and Order in Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: Channels 1, 39, 77, 115, 153. Mobile and portable radios operating on the mutual aid channels shall employ analog FM emission.

* * * * *

■ 6. Section 90.619 is amended by revising paragraphs (a)(5)(i) and (c)(6)(i) to read as follows:

§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(5) * * *

(i) Channel numbers 1–230 are also available to eligible applicants in the Public Safety Category in the Canada Border Regions. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: Channels 1, 39, 77, 115, 153. Mobile and portable radios operating on the mutual aid channels shall employ analog FM emission.

* * * * *

(c) * * *

(6) * * *

(i) Channel numbers 1–230 are also available to eligible applicants in the Public Safety Category in the Canada Border Regions. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: Channels 1, 39, 77, 115, 153. Mobile and portable radios operating on the mutual aid channels shall employ analog FM emission.

* * * * *

[FR Doc. 2016–11336 Filed 5–13–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 173, and 178

[Docket No. PHMSA–2015–0271 (HM–261)]

RIN 2137–AF15

Hazardous Materials: Incorporation by Reference Edition Update for the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Transportation Systems for Liquids and Slurries: Pressure Piping Code

Correction

In rule document 2016–10027 appearing on pages 25613–25618 in the issue of Friday, April 29, 2016, make the following correction:

On page 25614, in the first column, in the “**DATES:**” section, beginning on the 14th line, “[insert date 60 days after publication in the **Federal Register**]” should read “June 28, 2016”.

[FR Doc. C1–2016–10027 Filed 5–13–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151210999–6348–02]

RIN 0648–XE620

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; 2016 Closure of the Northern Gulf of Maine Scallop Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Northern Gulf of Maine Scallop Management Area will close for the remainder of the 2016 fishing year. No vessel issued a federal scallop permit, with the exception of Northern Gulf of Maine permit holders also holding a Maine state scallop permit and fishing under the state waters exemption program in Maine state waters, may fish for, possess, or land scallops from the Northern Gulf of Maine Scallop Management Area. Regulations require this action once NMFS projects that 100 percent of the 2016 total allowable catch for the Northern Gulf of Maine Scallop Management Area will be harvested.

DATES: Effective 0001 hr local time, May 13, 2016, through February 28, 2017.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing fishing activity in the Northern Gulf of Maine (NGOM) Scallop Management Area in 50 CFR 648.54 and § 648.62. These regulations authorize vessels issued a valid federal scallop permit to fish in the NGOM Scallop Management Area under specific conditions, including a total allowable catch (TAC) of 67,454 lb (30.6 mt) for the 2016 fishing year, and a State Waters Exemption Program for the state of Maine. NMFS reduced the 2016 NGOM Scallop Management Area TAC from 70,000 lb (31.8 mt) to 67,454 lb (30.6 mt) to account for a 2,546-lb (1,155-kg) over harvest of the 2015 TAC during the 2015 fishing year. Section 648.62(b)(2) requires the NGOM Scallop Management Area to be closed to federally permitted scallop vessels for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the TAC for fishing year 2016 is projected to be harvested. Any vessel that holds a federal NGOM permit (category LAGC B) may continue to fish in the Maine state waters portion of the NGOM Scallop Management Area under the State Waters Exemption Program found in § 648.54 provided they have a valid Maine state scallop permit and fish in state waters only.

Based on trip declarations by federally permitted scallop vessels fishing in the NGOM Scallop Management Area, and analysis of fishing effort, we project that the 2016 TAC will be harvested as of May 13, 2016. Therefore, in accordance with § 648.62(b)(2), the NGOM Scallop Management Area is closed to all federally permitted scallop vessels as of May 13, 2016. No vessel issued a federal scallop permit may fish for, possess, or land scallops in or from the NGOM Scallop Management Area after 0001 local time, May 13, 2016, unless the vessel is fishing exclusively in state waters and is participating in an approved state waters exemption program as specified in § 648.54. Any federally permitted scallop vessel that has declared into the NGOM Scallop Management Area, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, May 13, 2016, may complete its trip. All limited access scallop vessels fishing on a day-at-sea must exit the NGOM Scallop

Management Area before 0001 hr local time, May 13, 2016. This closure is in effect through February 28, 2017.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The NGOM Scallop Management Area opened for the 2016 fishing year on March 1, 2016. The regulations at § 648.60(b)(2) require this closure to ensure that federally permitted scallop vessels do not harvest more than the allocated TAC for the NGOM Scallop Management Area. The projections of the date on which the NGOM Scallop Management Area TAC will be harvested become apparent only as trips into the area occur on a real-time basis and as activity trends begin to appear. As a result, an accurate projection only can be made very close in time to when the TAC is harvested. In addition, proposing a closure would likely increase activity, triggering an earlier closure than predicted. To allow federally permitted scallop vessels to continue to take trips in the NGOM Scallop Management Area during the period necessary to publish and receive comments on a proposed rule would likely result in vessels over harvesting the 2016 TAC for the NGOM Scallop Management Area. Over harvest from the NGOM Scallop Management Area would result in excessive fishing effort in the area, where effort controls are critical, thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures. Also, the public had prior notice and full opportunity to comment on this closure process when we put these provisions in place. NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11494 Filed 5–11–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160126053–6398–02]

RIN 0648–BF74

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2016 Tribal and Non-Tribal Fisheries for Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the 2016 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This final rule announces the 2016 U.S. Total Allowable Catch (TAC) of 367,553 metric tons of Pacific whiting, establishes the tribal allocation of 64,322 metric tons, establishes a set-aside for research and bycatch of 1,500 metric tons, and announces the allocations of Pacific whiting to the non-tribal fishery for 2016. This rule will ensure that the 2016 Pacific whiting fishery is managed in accordance with the goals and objectives of the Magnuson-Stevens Act, the FMP, the Pacific Whiting Act of 2006, and other applicable laws.

DATES: Effective May 12, 2016.

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206–526–4644, and email: *Miako.Ushio@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html* and at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

The final environmental impact statement (FEIS) regarding Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter is available on the NOAA Fisheries West Coast Region Web site at: *www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html* and copies are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Background

This final rule announces the TAC for Pacific whiting, expressed in metric tons (mt). This is the fifth year that the TAC for Pacific whiting has been determined under the terms of the Agreement with Canada on Pacific Hake/Whiting (the Agreement) and the Pacific Whiting Act of 2006 (the Whiting Act), 16 U.S.C. 7001–7010. The Agreement and the Whiting Act establish bilateral bodies to implement the terms of the Agreement, each with various responsibilities, including: The Joint Management Committee (JMC), which is the decision-making body; the Joint Technical Committee (JTC), which conducts the stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC (The Agreement, Art. II–IV; 16 U.S.C. 7001–7005). The Agreement establishes a default harvest policy (F–40 percent with a 40/10 adjustment) and allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada. The JMC is primarily responsible for developing a TAC recommendation to the Parties (United States and Canada). The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

Historic Catch

Coastwide Pacific whiting landings averaged 224,376 mt from 1966 to 2015, with a low of 89,930 mt in 1980 and a peak of 363,135 mt in 2005. The coastwide catch in 2015 was 190,663 mt of a 440,000 mt bilateral TAC. The U.S. harvested 47.4 percent and Canada 31.8 percent of their respective allocations. The overall catch of Pacific whiting in U.S. waters was much less than anticipated. Industry reported that this lower catch was due to several factors including unusual, dispersed distribution of the fish later in the season after the at-sea fleet returned from Alaska, possibly due to anomalously warm ocean conditions. Catches may also have been impacted by reduced global market demand resulting from, among other things, a strong U.S. dollar and other market conditions. The Catcher/Processor (C/P) Coop Program, Mothership Coop Program, and Shore-Based IFQ Program fleets caught 67.9 percent, 38.8 percent, and 46.6 percent of their total quotas, respectively. Tribal fisheries did not land any Pacific whiting in 2015.

2016 Pacific Whiting Stock Assessment

The JTC prepared the stock assessment document "Status of Pacific hake (whiting) stock in U.S. and Canadian waters in 2016," which was completed on March 1, 2016, and presents a model that depends primarily upon an acoustic survey biomass index, catches, and age compositions for information on the scale of the current Pacific whiting stock. The most recent survey was conducted in 2015, and was a result of collaboration between Fisheries and Oceans Canada and NOAA Fisheries. The 2015 coast-wide survey biomass estimate was 2.156 million mt, which is estimated to be the highest on record for the survey. The amount of spawning biomass in 2016 is estimated to be 79 percent of historic average levels, well above the target 40 percent.

As with past estimates, there is a considerable range of uncertainty around the most recent estimates because young cohorts that make up a large portion of the survey biomass have not been observed very long. However, age-composition data from both the aggregated fisheries (1975–2015) and the acoustic survey (1998–2015) indicate an exceptionally strong 2010 cohort (age-5 whiting in 2015) contributing to recent increases in the survey index. Coast-wide catches in recent years have largely depended on the 2010 cohort, accounting for 70 percent of the commercial catch in 2013, 67 percent in 2014, and 67 percent in 2015. Similarly, the 2015 survey age composition was nearly 60 percent age-5 fish from the 2010 cohort. Both survey and fishery data sources provided initial indications that the 2014 cohort (age-1 whiting in 2015) was above average. Current estimates suggest that the 2014 cohort is potentially similar in magnitude to the 2010 cohort, but because it has been observed only once (in 2015 data) the estimate is highly uncertain.

The JTC provided tables showing catch alternatives for 2016. Using the default F–40 percent harvest rate identified in the Agreement (Paragraph 1 of Article III), the coastwide TAC for 2016 would be 804,399 mt. The stock assessment model predicts that the probability of the spawning stock biomass dropping below 40 percent under the default harvest rate catch scenario is 54 percent, and the probability of dropping below 10 percent of unfished biomass in 2016 is less than 1 percent. Spawning biomass in 2017 is likely to be less than in 2016 under any catch level, because the dominant 2010 cohort is projected to lose biomass due to natural mortality at a faster rate than it will increase in biomass due to growth.

Scientific and Management Reviews

The SRG met in Seattle, Washington, on February 23–25, 2016, to review the draft stock assessment document prepared by the JTC. The SRG noted that the 2015 acoustic-trawl survey was successfully completed, and that the 2015 survey biomass was 12 percent higher than the 2013 survey estimate, with approximately 21.4 percent of the estimated biomass in Canadian waters and 78.6 percent in U.S. waters and that as with past assessments, uncertainty in current stock status projections is likely underestimated. The SRG determined that substantive improvements had been made in the biomass estimate. In particular, a geostatistical approach, kriging, has been applied to develop index estimates since 2011, and important refinements were made this year that increased the SRG's confidence in the extrapolated biomass estimates. The SRG noted that according to the stock assessment, projected median catches of 830,124 mt in 2016 and 955,423 mt in 2017 could be achievable without overfishing.

The AP met on March 16–18, 2016, and provided its 2016 TAC recommendation to the JMC on March 18, 2016. At its March 17–18, 2016, meeting, the JMC reviewed the advice of the JTC, the SRG, and the AP, and agreed on a TAC recommendation for transmittal to the Parties. Paragraph 1 of Article III of the Agreement directs the default harvest rate to be used unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore whiting resource.

After consideration of the 2016 stock assessment and other relevant scientific information, the JMC did not use the default harvest rate. Instead, a more conservative approach was agreed upon. There were two primary reasons for choosing a TAC well below the default level of F–40 percent: (1) A desire to minimize mortality of the potentially strong 2014 year class, which is anticipated to be important to the fishery over the next several years, but the scale of which is uncertain, and (2) to extend the harvest available from the 2010 year class. The JMC recommended an unadjusted TAC of 439,995 mt for 2016, which is approximately half of what the TAC would be by using the default harvest rate. This conservative approach was endorsed by the AP. Both the U.S. and Canada caught significantly less than their individual TACs in 2015. Therefore, 15 percent of each Party's individual unadjusted 2015 TACs is added to that Party's TAC for 2016 in accordance with Article II of the Agreement, resulting in a 2016 adjusted coastwide TAC of 497,500 mt.

The recommendation for an unadjusted 2016 United States TAC of 325,068 mt, plus 42,485 mt carryover of uncaught quota from 2015 results in an adjusted United States TAC of 367,553 mt for 2016 (73.88 percent of the coastwide TAC). This recommendation is consistent with the best available science, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the Parties on March 18, 2016. NMFS, under delegation of authority from the Secretary of Commerce, approved the adjusted TAC recommendation of 367,553 mt for U.S. fisheries on April 21, 2016.

Tribal Fishery Allocation and Reapportionment

This final rule establishes the tribal allocation of Pacific whiting for 2016. NMFS issued a proposed rule regarding this allocation on March 10, 2016 (81 FR 12676). This action finalizes the tribal allocation. Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery using the process described in § 660.50(d)(1). According to § 660.55(b), the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery, and is not governed by limited entry or open access regulations or allocations.

The proposed rule described the tribal allocation as 17.5 percent of the U.S. TAC, and projected a range of potential tribal allocations for 2016 based on a range of U.S. TACs over the last 10 years (plus or minus 25 percent to capture variability in stock abundance). As described in the proposed rule, the resulting range of potential tribal allocations was 17,842 to 71,110 mt.

As described earlier in this preamble, the U.S. TAC for 2016 is 367,553 mt. Applying the approach described in the proposed rule, NMFS is establishing the 2016 tribal allocation of 64,322 mt (17.5 percent of the U.S. TAC) at § 660.50(f)(4) by this final rule. While the total amount of Pacific whiting to which the Tribes are entitled under their treaty right has not yet been determined, and new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 64,322 mt is within the likely range of potential treaty right amounts.

As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of whiting to which the Tribes are entitled under their treaty right. Rather, this rule adopts an interim allocation, pending the determination of the total treaty amount. That amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and State of Washington.

Harvest Guidelines and Allocations

This final rule establishes the fishery harvest guideline (HG) and allocates it among the three non-tribal sectors of the Pacific whiting fishery. The fishery harvest guideline, sometimes called the non-tribal allocation, was not included in the tribal whiting proposed rule published on March 10, 2016 (81 FR 12676), for two reasons related to timing and process. First, a recommendation on the coastwide TAC for Pacific whiting for 2016, under the terms of the Agreement with Canada, was not available until March 18, 2016. This recommendation for a U.S. TAC was approved by NMFS, under delegation of authority from the Secretary of Commerce, on April 21, 2016. Second, the fishery HG is established following deductions from the U.S. TAC for the tribal allocation, mortality in scientific research activities, and fishing mortality in non-groundfish fisheries. The Council establishes the amounts deducted from the U.S. TAC for scientific research and non-groundfish fisheries on an annual basis at its April meeting, based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. For 2016, the Council recommended and NMFS approves a scientific research and bycatch set-aside of 1,500 mt. These amounts are not set until the TAC is available. The fishery HG is therefore being finalized with this rule. The 2016 HG, sometimes referred to as the non-tribal allocation, for Pacific whiting is 301,731 mt. This amount was determined by deducting from the total U.S. TAC of 367,553 mt, the 64,322 mt tribal allocation, along with 1,500 mt for scientific research catch and fishing mortality in non-groundfish fisheries.

Regulations at § 660.55(i)(2) allocate the fishery HG among the non-tribal C/P Coop Program, Mothership Coop Program, and Shorebased IFQ Program sectors of the Pacific whiting fishery. The C/P Coop Program is allocated 34 percent (102,589 mt for 2016), the Mothership Coop Program is allocated 24 percent (72,415 mt for 2016), and the Shorebased IFQ Program is allocated 42 percent (126,727 mt for 2016). The fishery south of 42° N. lat. may not take more than 6,336 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 15, the start of the primary Pacific whiting season north of 42° N. lat.

The 2016 allocations of canary rockfish, darkblotched rockfish, Pacific ocean perch and widow rockfish to the Pacific whiting fishery were published in a final rule on March 10, 2015 (80 FR 12567). The allocations to the Pacific whiting fishery for these species are described in the footnotes to Table 2.b to part 660, subpart C and are not changed via this rulemaking.

Comments and Responses

On March 10, 2016, NMFS issued a proposed rule for the allocation and management of the 2016 tribal Pacific whiting fishery. The comment period on the proposed rule closed on April 11, 2016. No comment letters were received.

Classification

The Annual Specifications and Management Measures for the 2016 Tribal and non-Tribal Fisheries for Pacific Whiting are issued under the authority of the Magnuson-Stevens Act, and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. NMFS has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

NMFS has determined that the Pacific whiting fishery, both tribal and non-tribal, is consistent, to the maximum extent practicable, with approved coastal zone management programs for the States of Washington and Oregon. NMFS sent letters to the State of Washington and the State of Oregon describing its determination of consistency dated February 5, 2016. Both the State of Oregon and the State of Washington responded indicating agreement with the determination.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator finds good cause to waive prior public notice and comment and delay in effectiveness for those provisions in this final rule that were not included in 80 FR 12676, *e.g.*, the U.S. TAC, as delaying this rule would be impracticable and contrary to the public interest. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2016, or the primary Pacific whiting season will effectively remain closed.

Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2016 stock assessment for Pacific whiting was prepared in early 2016, and included updated total catch, length and age data from the U.S. and Canadian fisheries from 2015, and biomass indices from the 2015 Joint U.S.-Canadian acoustic/midwater trawl surveys. Because of this late availability of the most recent data for the assessment, and the need for time to conduct the treaty process for determining the TAC using the most recent assessment, it would not be possible to allow for notice and comment before the start of the primary Pacific whiting season on May 15.

A delay in implementing the Pacific whiting harvest specifications to allow for notice and comment would be contrary to the public interest because it would require either a shorter primary whiting season or development of a TAC without the most recent data. A shorter season could prevent the tribal and non-tribal fisheries from attaining their 2016 allocations, which would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. A TAC determined without the most recent data could fail to account for significant fluctuations in the biomass of this relatively short-lived species. To prevent these adverse effects and to allow the Pacific whiting season to commence, it is in the best interest of the public to waive prior notice and comment.

In addition, pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in effectiveness. Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Failure to make this final rule effective at the start of the fishing year will undermine the intent of the rule, which is to promote the optimal utilization and conservation of Pacific whiting. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible Pacific whiting fishing season and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is effective upon publication in the **Federal Register**.

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html.*

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

When an agency proposes regulations, the Regulatory Flexibility Act (RFA) requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) document that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information and public comments. This FRFA incorporates the IRFA and a summary of the analyses completed to support the action.

NMFS published a proposed rule on March 10, 2016 (81 FR 12676) for the allocation of the 2016 tribal Pacific whiting fishery. The comment period on the proposed rule closed on April 11, 2016, and no comments were received on the proposed rule, the IRFA, or the economic impacts of this action generally. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 604(a)(1) through (5), and summarized below. The FRFA must contain: (1) A succinct statement of the need for, and objectives of, the rule; (2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available; (4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This final rule establishes the initial 2016 Pacific whiting allocations for the tribal fishery, the fishery HG, the allocations for the non-tribal sectors (C/P, mothership, and shoreside), and the amount of Pacific whiting deducted from the TAC for scientific research and fishing mortality in non-groundfish fisheries. The amount of whiting allocated to these sectors is based on the U.S. TAC. From the U.S. TAC, small amounts of whiting that account for research catch and for bycatch in other fisheries are deducted. The amount of the tribal allocation is also deducted directly from the TAC. After accounting for these deductions, the remainder is the commercial harvest guideline. This guideline is then allocated among the other three sectors as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program.

There are four tribes that can participate in the tribal whiting fishery: The Hoh, Makah, Quileute, and Quinault. The current tribal fleet is composed of 5 trawlers but in recent years, there have been fewer vessels actually fishing. Based on groundfish ex-vessel revenues and on tribal enrollments (the population size of each tribe), the four tribes and their fleets are considered "small" entities. We expect one tribal entity, the Makah Tribe, to fish in 2016.

This rule would also impact vessels in the non-tribal fishery that fish for Pacific whiting. Currently, there are three non-tribal sectors in the Pacific whiting fishery: Shorebased IFQ Program—Trawl Fishery; Mothership Coop Program—Whiting At-sea Trawl Fishery; and C/P Coop Program—Whiting At-sea Trawl Fishery.

Currently, the Shorebased IFQ Program is composed of 172 Quota Share permits/accounts, 152 vessel accounts, and 44 first receivers. The Mothership fishery is currently composed of a single coop, with six mothership processor permits, and 34 Mothership/Catcher-Vessel endorsed permits, with three permits each having two catch history assignments. The C/P Program is composed of 10 C/P permits owned by three companies that have formed a single coop. These regulations directly affect IFQ Quota shareholders whose vessel accounts receive Quota Pounds (QP), holders of mothership catcher-vessel-endorsed permits who determine how many co-ops will participate in the fishery and how much fish each co-op is to receive, and the C/P Coop which is made up of three companies that own the catcher-processor permits.

As part of the permit application processes for the non-tribal fisheries, based on a review of the SBA size criteria, applicants are asked if they consider themselves a "small" business, and they are asked to provide detailed ownership information. Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. All of the 34 mothership catch history assignments are associated with a single mothership co-op and all ten of the C/P permits are associated with a co-op. These co-ops are considered large entities from several perspectives; they have participants that are large entities, whiting co-op revenues exceed or have exceeded $20.5 million, or co-op members are connected to American Fishing Act permits or co-ops where the NMFS Alaska Region has determined they are all large entities (79 FR 54597; September 12, 2014). After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these regulations, 89 of which are considered "small" businesses.

In total in 2015, non-tribal sectors harvested 52 percent of the final non-tribal allocation of 296,685 mt. The revised Pacific whiting allocations for 2015 were: Tribal 26,888 mt, C/P Coop 100,873 mt; Mothership Coop 71,204 mt; and Shorebased IFQ Program 124,607.45 mt. Sector allocations in 2016 are higher than sector catches in 2015, and the initial 2016 allocations to these non-tribal sectors are thirteen percent higher than their 2015 initial allocations. NMFS concludes that this rule will be beneficial to both large and small entities.

For the years 2011 to 2015, the total whiting fishery (tribal and non-tribal) averaged harvests of approximately 205,000 mt annually, worth an average estimated $52 million in ex-vessel revenues. As the U.S. whiting TAC has been highly variable during this time, so have harvests. In the past five years, harvests have ranged from 151,000 mt (2015) to 264,000 mt (2014). Ex-vessel revenues have also varied. Annual ex-vessel revenues have ranged from $25 million (2015) to $65 million (2013 and 2014). Revenues are estimated for the mothership and catcher/processor harvest using the average annual shoreside ex-vessel price. Total whiting harvest in 2015 was approximately 151,000 mt, worth $25 million, at a shoreside ex-vessel price of $167 per mt. Ex-vessel revenues in 2014 were over $64 million with a harvest of 264,000 mt and an average shoreside ex-vessel price of $240 per mt. The prices for whiting are largely determined by the world market for groundfish, because most of the whiting harvested is exported. Poor world market conditions led to a decrease in prices in 2015. A confluence of biological factors precluded the tribal fishery in 2015, and resulted in a much lower harvest percentage of the annual commercial TAC than in prior years. In 2015 NMFS reapportioned 30,000 mt of the original 56,888 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year.

NMFS believes this rule will not adversely affect small entities. There are no significant alternatives to the action in this final rule that accomplish the stated objectives of applicable statutes and the treaties with the affected tribes that minimize any of the significant economic impact of the final rule on small entities.

The RFA can be found at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/*. The NMFS Economic Guidelines that describe the RFA and EO 12866 can be found at *http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf*.

There are no reporting or recordkeeping requirements associated with this final rule. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior "no jeopardy" conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected Evolutionarily Significant Units (ESUs). Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated section 7 consultation on the Pacific Coast Groundfish FMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed salmonid species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species, including listed eulachon, the southern distinct population segment (DPS) of green sturgeon, humpback whales, the eastern DPS of Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. Since that biological opinion, the eastern DPS of Steller sea lions was delisted on November 4, 2013 (78 FR 66140); however, this delisting did not change the designation of the codified critical habitat for the eastern DPS of Steller sea lions. On January 21, 2013, NMFS evaluated the fishery's effects on eulachon to consider whether the 2012 opinion should be reconsidered in light of new information from the 2011 fishery and the proposed chafing gear modifications. NMFS determined that information about bycatch of eulachon in 2011 and chafing gear regulations did not change the effects that were analyzed in the December 7, 2012, biological opinion, or provide any other basis to reinitiate consultation. At the Pacific Fishery Management Council's June 2015 meeting, new estimates of eulachon take from fishing activity under the FMP indicated that the incidental take threshold in the 2012 biological opinion was exceeded again in 2013. The increased bycatch may be due to increased eulachon abundance. In light of the new fishery and abundance information, NMFS has reinitiated consultation on eulachon. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat. The 2012–2013 two-year average of short-tailed albatross take in the groundfish fishery, using expanded annual estimates of black-footed albatross as a proxy, ranged from 1.35 to 2.0 for the lower short-tailed albatross population estimate to 1.45 to 2.15 for the higher population estimates, which exceeded the 2 per 2-year period identified in the incidental take statement in the biological opinion. This led NMFS to reinitiate ESA Section 7 consultation on take of this species in the Pacific Coast Groundfish Fishery. Take of short-tailed albatross has not been observed in the whiting fishery, which is a midwater trawl fishery. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize listed short-tailed albatross, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required.

In accordance with the National Environmental Policy Act (NEPA), NMFS prepared a final environmental impact statement (FEIS) regarding Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter in the Pacific Coast Groundfish Fishery. In that FEIS, the effects of the Pacific whiting fishery were considered using a range of potential harvest levels, the highest of which considered was 408,260 mt, above the harvest level set in this rule.

Pursuant to Executive Order 13175, this final rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this final rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: May 9, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2016 is 64,322 mt.

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■ 3. Tables 2a and 2b to part 660, subpart C, are revised to read as follows:

Table 2a to Part 660, Subpart C – 2016, and Beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest Guidelines (weights in metric tons)

	OFL	ABC	ACL a/	Fishery HG b/
BOCACCIO S. of 40°10' N. lat. c/	1,351	1,291	362	354
CANARY ROCKFISH d/	729	697	125	110
COWCOD S. of 40°10' N. lat. e/	68	62	10	8
DARKBLOTCHED ROCKFISH f/	580	554	346	325
PACIFIC OCEAN PERCH g/	850	813	164	149
PETRALE SOLE h/	3,044	2,910	2,910	2,673
YELLOWEYE ROCKFISH i/	52	43	19	13
Arrowtooth flounder j/	6,396	5,328	5,328	3,241
Black rockfish (OR-CA) k/	1,183	1,131	1,000	999
Black rockfish (WA) l/	423	404	404	390
Cabezon (CA) m/	158	151	151	151
Cabezon (OR) n/	49	47	47	47
California scorpionfish o/	117	111	111	109
Chilipepper S. of 40°10' N. lat. p/	1,694	1,619	1,619	1,595
Dover sole q/	59,221	56,615	50,000	48,406
English sole r/	7,890	7,204	7,204	6,991
Lingcod N. of 40°10' N. lat. s/	2,891	2,719	2,719	2,441
Lingcod S. of 40°10' N. lat. t/	1,136	946	946	937
Longnose skate u/	2,405	2,299	2,000	1,927
Longspine thornyhead (coastwide) v/	4,763	3,968	NA	NA
Longspine thornyhead N. of 34°27' N. lat.	NA	NA	3,015	2,969
Longspine thornyhead S. of 34°27' N. lat.	NA	NA	952	949
Pacific Cod w/	3,200	2,221	1,600	1,091
Pacific whiting x/	830,124	x/	x/	301,731
Sablefish (coastwide)	8,526	7,784	NA	NA
Sablefish N. of 36° N. lat. y/	NA	NA	5,241	See Table 2c
Sablefish S. of 36° N. lat. z/	NA	NA	1,880	1,875
Shortbelly aa/	6,950	5,789	500	498
Shortspine thornyhead (coastwide) bb/	3,169	2,640	NA	NA
Shortspine thornyhead N. of 34°27' N. lat.	NA	NA	1,726	1,667
Shortspine thornyhead S. of 34°27' N. lat.	NA	NA	913	871
Spiny dogfish cc/	2,503	2,085	2,085	1,747
Splitnose S. of 40°10' N. lat. dd/	1,826	1,746	1,746	1,736
Starry flounder ee/	1,847	1,539	1,539	1,529
Widow rockfish ff/	3,990	3,790	2,000	1,880
Yellowtail N. of 40°10' N. lat. gg/	6,949	6,344	6,344	5,314
Minor Nearshore Rockfish N. of 40°10' N. lat. hh/	88	77	69	69
Minor Shelf Rockfish N. of 40°10' N. lat. ii/	2,218	1,953	1,952	1,880
Minor Slope Rockfish N. of 40°10' N. lat. jj/	1,844	1,706	1,706	1,642
Minor Nearshore Rockfish S. of 40°10' N. lat. kk/	1,288	1,148	1,006	1,002
Minor Shelf Rockfish S. of 40°10' N. lat. ll/	1,919	1,626	1,625	1,576
Minor Slope Rockfish S. of 40°10' N. lat. mm/	814	705	695	675
Other Flatfish nn/	9,645	7,243	7,243	7,039
Other Fish oo/	291	243	243	243

a/ Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

b/ Fishery harvest guidelines means the harvest guideline or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

c/ Bocaccio. A bocaccio stock assessment update was conducted in 2013 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10 N. lat. A historical catch distribution of approximately 6 percent was used to apportion the assessed stock to the area north of 40°10′ N. lat. The bocaccio stock was estimated to be at 31.4 percent of its unfished biomass in 2013. The OFL of 1,351 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,291 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 362 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 8.3 mt is deducted from the ACL to accommodate the incidental open access fishery (0.7 mt), EFP catch (3.0 mt) and research catch (4.6 mt), resulting in a fishery HG of 353.7 mt. The California recreational fishery has an HG of 185.6 mt.

d/ Canary rockfish. A canary rockfish stock assessment update was conducted in 2011 and the stock was estimated to be at 23.2 percent of its unfished biomass coastwide in 2011. The coastwide OFL of 729 mt is projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 697 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 125 mt is based on the current rebuilding plan with a target year to rebuild of 2030 and an SPR harvest rate of 88.7 percent. 15.2 mt is deducted from the ACL to accommodate the Tribal fishery (7.7 mt), the incidental open access fishery (2 mt), EFP catch (1.0 mt) and research catch (4.5 mt) resulting in a fishery HG of 109.8 mt. Recreational HGs are: 3.5 mt (Washington); 12.0 mt (Oregon); and 25.0 mt (California).

e/ Cowcod. A stock assessment for the Conception Area was conducted in 2013 and the stock was estimated to be 33.9 percent of its unfished biomass in 2013. The Conception Area OFL of 56.4 mt is projected in the 2013 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The OFL of 12.0 mt for the unassessed portion of the stock in the Monterey area is based on depletion-based stock reduction analysis. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10′ N. lat. OFL of 68.4 mt. The ABC for the area south of 40°10′ N. lat. is 61.5 mt. The assessed portion of the stock in the Conception Area is considered category 2, with a Conception Area contribution to the ABC of 51.5 mt, which is an 8.7 percent reduction from the Conception area OFL (σ=0.72/P*=0.45). The unassessed portion of the stock in the Monterey area is considered a category 3 stock, with a contribution to the ABC of 10.0 mt, which is a 17 percent reduction from the Monterey area OFL (σ=1.44/P*=0.45). A single ACL of 10.0 mt is being set for both areas combined. The ACL of 10.0 mt is based on the rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 82.7 percent, which is equivalent to an exploitation rate (catch over age 11+ biomass) of 0.007. 2.0 mt is deducted from the ACL to accommodate EFP fishing (less than 0.02 mt) and research activity (2.0 mt), resulting in a fishery HG of 8.0 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 4.0 mt is being set for both areas combined.

f/ Darkblotched rockfish. A 2013 stock assessment estimated the stock to be at 36 percent of its unfished biomass in 2013. The OFL of 580 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$.The ABC of 554 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 346 mt is based on the current rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. 20.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (18.4 mt), EFP catch (0.1 mt) and research catch (2.1 mt), resulting in a fishery HG of 325.2 mt.

g/ Pacific Ocean Perch. A stock assessment was conducted in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 850 mt for the area north of 40°10′ N. lat. is projected in the 2011 rebuilding analysis using an $F_{50\%}$ F_{MSY} proxy. The ABC of 813 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 164 mt is based on the current rebuilding plan with a target year to rebuild of 2051 and an SPR harvest rate of 86.4 percent. 15 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (0.6 mt), and research catch (5.2 mt), resulting in a fishery HG of 149.0 mt.

h/ Petrale sole. A 2013 stock assessment estimated the stock to be at 22.3 percent of its unfished biomass in 2013. The OFL of 3,044 mt is projected in the 2013 assessment using an F30% F_{MSY} proxy. The ABC of 2,910 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is based on the 25–5 harvest control rule specified in the current rebuilding plan; since the stock is projected to be rebuilt at the start of 2014, the ACL is set equal to the ABC. 236.6 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), the incidental open access fishery (2.4 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,673.4 mt.

i/ Yelloweye rockfish. A stock assessment update was conducted in 2011. The stock was estimated to be at 21.4 percent of its unfished biomass in 2011. The 52 mt coastwide OFL was projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 43 mt is a 16.77 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 19 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.8 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.03 mt) and research catch (3.3 mt) resulting in a fishery HG of 13.2 mt. Recreational HGs are being established: 3.1 mt (Washington); 2.8 mt (Oregon); and 3.7 mt (California).

j/ Arrowtooth flounder. The arrowtooth flounder stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 6,396 mt is derived from the 2007 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 5,328 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 2,087 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (16.4 mt), resulting in a fishery HG of 3,241 mt.

k/ Black rockfish south (Oregon and California). A stock assessment was conducted for black rockfish south of 45°46′ N. lat. (Cape Falcon, Oregon) to Central California (*i.e.,* the southern-most extent of black rockfish, Love et al. 2002) in 2007. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$ plus 3 percent of the OFL from the stock assessment conducted for black rockfish north of 45°46′ N. lat., to cover the portion of the stock occurring off Oregon north of Cape Falcon (the 3% adjustment is based on historical catch distribution). The resulting OFL for the area south of 46°16′ N. lat. is 1,183 mt. The ABC of 1,131 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 2016 ACL is 1,000 mt, which maintains the constant catch strategy designed to keep the stock above its target biomass of $B_{40\%}$. 1 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 999 mt. The black rockfish ACL, in the area south of 46°16′ N. lat. (Columbia River), is subdivided with separate HGs for waters off Oregon (579 mt/ 58 percent) and for waters off California (420 mt/42 percent).

l/ Black rockfish north (Washington). A stock assessment was conducted for black rockfish north of 45°46′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16′ N. lat. is 423 mt and is 97 percent of the OFL from the assessed area based on the area distribution of historical catch. The ABC of 404 mt for the north is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 14 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG of 390 mt.

m/ Cabezon (California). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off

California was estimated to be at 48.3 percent of its unfished biomass in 2009. The OFL of 158 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 151 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is equal to the ACL of 151 mt.

n/ Cabezon (Oregon). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 47 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is also equal to the ACL of 47 mt.

o/ California scorpionfish was assessed in 2005 and was estimated to be at 79.8 percent of its unfished biomass in 2005. The OFL of 117 mt is projected in the 2005 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The ABC of 111 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 2 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 109 mt.

p/ Chilipepper. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 70 percent of its unfished biomass in 2006. Chilipepper are managed with stock-specific harvest specifications south of 40°10 N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. Projected OFLs are stratified north and south of 40°10′ N. lat. based on the average 1998–2008 assessed area catch, which is 93 percent for the area south of 40°10′ N. lat. and 7 percent for the area north of 40°10′ N. lat. The OFL of 1,694 mt for the area south of 40°10′ N. lat. is projected in the 2007 assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,619 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 24 mt is deducted from the ACL to accommodate the incidental open access fishery (5 mt), EFP fishing (10 mt), and research catch (9 mt), resulting in a fishery HG of 1,595 mt.

q/ Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 59,221 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 56,615 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. However, the ACL of 50,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,594 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt), and research catch (41.9 mt), resulting in a fishery HG of 48,406 mt.

r/ English sole. A 2013 stock assessment was conducted, which estimated the stock to be at 88 percent of its unfished biomass in 2013. The OFL of 7,890 mt is projected in the 2013 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 7,204 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 213 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (7 mt) and research catch (5.8 mt), resulting in a fishery HG of 6,991 mt.

s/ Lingcod north. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off Washington and Oregon was estimated to be at 62 percent of its unfished biomass in 2009. The OFL for Washington and Oregon of 1,842 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The OFL is re-apportioned by adding 48% of the OFL from California, resulting in an OFL of 2,891 mt for the area north of 40°10′ N. lat. The ABC of 2,719 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) for the area north of 42° N. lat. as it's a category 1 stock, and an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) for the area between 42° N. lat. and 40°10′ N. lat., as it's a category 2 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 278 mt is deducted from the ACL to accommodate the Tribal fishery (250 mt), the incidental open access fishery (16 mt), EFP catch (0.5 mt) and research catch (11.7 mt), resulting in a fishery HG of 2,441 mt.

t/ Lingcod south. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off California was estimated to be at 74 percent of its unfished biomass in 2009. The OFL for California of 2,185 mt is projected in the assessment using an F_{MSY} proxy of $F_{45\%}$. The OFL is re-apportioned by subtracting 48% of the OFL, resulting in an OFL of 1,136 mt for the area south of 40°10′ N. lat. The ABC of 946 mt is based on a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 9 mt is deducted from the ACL to accommodate the incidental open access fishery (7 mt), EFP fishing (1 mt), and research catch (1.1 mt), resulting in a fishery HG of 937 mt.

u/ Longnose skate. A stock assessment was conducted in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,405 mt is derived from the 2007 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,299 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock and is less than the ABC. 73 mt is deducted from the ACL to accommodate the Tribal fishery (56 mt), incidental open access fishery (3.8 mt), and research catch (13.2 mt), resulting in a fishery HG of 1,927 mt.

v/ Longspine thornyhead. A 2013 longspine thornyhead coastwide stock assessment estimated the stock to be at 75 percent of its unfished biomass in 2013. A coastwide OFL of 4,763 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 3,968 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 3,015 mt, and is 76 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 46 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (3 mt), and research catch (13.5 mt) resulting in a fishery HG of 2,969 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 952 mt and is 24 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 3 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 949 mt.

w/ Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 509 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (7 mt), and the incidental open access fishery (2.0 mt), resulting in a fishery HG of 1,091 mt.

x/ Pacific whiting. The coastwide stock assessment was published in 2016 and estimated the spawning stock to be at 76 percent of its unfished biomass. The 2016 OFL of 830,124 mt is based on the 2016 assessment with an $F_{40\%}$ FMSY proxy. The 2016 coastwide, unadjusted Total Allowable Catch (TAC) of 439,995 mt is based on the 2016 stock assessment. The U.S. TAC is 73.88 percent of the coastwide unadjusted TAC. Up to 15 percent of each party's unadjusted 2015 TAC (42,485 mt for the U.S. and 15,020 mt for Canada) is added to each party's 2016 unadjusted TAC, resulting in a U.S. adjusted 2016 TAC of 367,553 mt. From the adjusted U.S. TAC, 64,322 mt is deducted to accommodate the Tribal fishery, and 1,500 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a fishery HG of 301,731 mt. The TAC for Pacific whiting is established under the provisions of the Agreement with Canada on Pacific Hake/Whiting and the Pacific Whiting Act of 2006, 16 U.S.C. 7001–7010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

y/ Sablefish north. A coastwide sablefish stock assessment was conducted in 2011. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2011. The coastwide OFL of 8,526 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{45\%}$. The ABC of 7,784 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40–10 adjustment was applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003–2010 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.6 percent apportioned north of 36° N. lat. and 26.4 percent apportioned south of 36° N. lat. The northern ACL is 5,241 mt and is reduced by 524 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.). The 524 mt Tribal allocation is reduced by 1.6 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

z/ Sablefish south. The ACL for the area south of 36° N. lat. is 1,880 mt (26.4 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,875 mt.

aa/ Shortbelly rockfish. A non-quantitative shortbelly rockfish assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated to be 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt is based on the estimated MSY in the 2007 stock assessment. The ABC of 5,789 mt is a 16.7 percent reduction of the OFL (σ=0.72/P^*=0.40) as it's a category 2 stock. The 500 mt ACL is set to accommodate for incidental catch when fishing for co-occurring healthy stocks and in recognition of the stock's importance as a forage species in the California Current ecosystem. 2 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 498 mt.

bb/ Shortspine thornyhead. A 2013 coastwide shortspine thornyhead stock assessment estimated the stock to be at 74.2 percent of its unfished biomass in 2013. A coastwide OFL of 3,169 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,640 mt is a 16.7 percent reduction from the OFL (σ=0.72/P^*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,726 mt. The northern ACL is 65.4 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 59 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (2 mt), and research catch (7 mt) resulting in a fishery HG of 1,667 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 913 mt. The southern ACL is 35.6 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 42 mt is deducted from the ACL to accommodate the incidental open access fishery (41 mt) and research catch (1 mt), resulting in a fishery HG of 871 mt for the area south of 34°27′ N. lat.

cc/ Spiny dogfish. A coastwide spiny dogfish stock assessment was conducted in 2011. The coastwide spiny dogfish biomass was estimated to be at 63 percent of its unfished biomass in 2011. The coastwide OFL of 2,503 mt is derived from the 2011 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide ABC of 2,085 mt is a 16.7 percent reduction from the OFL (σ=0.72/P^*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 338 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (49.5 mt), EFP catch (1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,747 mt.

dd/ Splitnose rockfish. A splitnose rockfish coastwide assessment was conducted in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose rockfish in the north is managed in the Minor Slope Rockfish complex and with species-specific harvest specifications south of 40°10′ N. lat. The coastwide OFL is projected in the 2009 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide OFL is apportioned north and south of 40°10′ N. lat. based on the average 1916–2008 assessed area catch resulting in 64.2 percent of the coastwide OFL apportioned south of 40°10′ N. lat., and 35.8 percent apportioned for the contribution of splitnose rockfish to the northern Minor Slope Rockfish complex. The southern OFL of 1,826 mt results from the apportionment described above. The southern ABC of 1,746 mt is a 4.4 percent reduction from the southern OFL (σ=0.36/P^*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{40\%}$. 110.5 mt is deducted from the ACL to accommodate research catch (9 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,736 mt.

ee/ Starry flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent in Washington and Oregon, and 62 percent in California). The coastwide OFL of 1,847 mt is derived from the 2005 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 1,539 mt is a 16.7 percent reduction from the OFL (σ=0.72/P^*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{25\%}$. 10.3 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), and the incidental open access fishery (8.3 mt), resulting in a fishery HG of 1,529 mt.

ff/ Widow rockfish. The widow rockfish stock was assessed in 2011 and was estimated to be at 51.1 percent of its unfished biomass in 2011. The OFL of 3,990 mt is projected in the 2011 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 3,790 mt is a 5 percent reduction from the OFL (σ=0.41/P^*=0.45). A unique sigma of 0.41 was calculated for widow rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. However, the ACL of 2,000 mt is less than the ABC due to high uncertainty in estimated biomass, yet this level of allowable harvest will allow access to healthy co-occurring species, such as yellowtail rockfish. 120.2 mt is deducted from the ACL to accommodate the Tribal fishery (100 mt), the incidental open access fishery (3.3 mt), EFP catch (9 mt), and research catch (7.9 mt), resulting in a fishery HG of 1,880 mt.

gg/ Yellowtail rockfish. A 2013 yellowtail rockfish stock assessment was conducted for the portion of the population north of 40°10′ N. lat. The estimated stock depletion is 69 percent of its unfished biomass in 2013. The OFL of 6,949 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 6,344 mt is an 8.7 percent reduction from the OFL (σ=0.72/P^*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 1,029.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (3 mt), EFP catch (10 mt) and research catch (16.6 mt), resulting in a fishery HG of 5,314 mt.

hh/ Minor Nearshore Rockfish north. The OFL for Minor Nearshore Rockfish north of 40°10′ N. lat. of 88 mt is the sum of the OFL contributions for the component species managed in the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.*, blue rockfish in California, brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P^* of 0.45. The resulting ABC of 77 mt is the summed contribution of the ABCs for the component species. The ACL of 69 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contributions for blue rockfish in California and China rockfish where the 40–10 adjustment was applied to the ABC contributions for these two stocks because they are in the precautionary zone. No deductions are made to the ACL, thus the fishery HG is equal to the ACL, which is 69 mt. Between 40°10′ N. lat. and 42° N. lat. the Minor Nearshore Rockfish complex north has a harvest guideline of 23.7 mt. Blue rockfish south of 42° N. lat. has a species-specific HG, described in footnote kk/.

ii/ Minor Shelf Rockfish north. The OFL for Minor Shelf Rockfish north of 40°10′ N. lat. of 2,218 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.*, greenspotted rockfish between 40°10′ and 42° N. lat. and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P^* of 0.45. The resulting ABC of 1,953 mt is the summed contribution of the ABCs for the component species. The ACL of 1,952 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 72 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt), and research catch (13.4 mt), resulting in a fishery HG of 1,880 mt.

jj/ Minor Slope Rockfish north. The OFL for Minor Slope Rockfish north of 40°10′ N. lat. of 1,844 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the Minor Slope Rockfish complexes are based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.36 for other category 1 stocks (*i.e.*, splitnose rockfish), a sigma value of 0.72 for category 2 stocks (*i.e.*, rougheye rockfish, blackspotted rockfish and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated spawning biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 1,706 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all the assessed component stocks are above the target biomass of $B_{40\%}$. 64 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (1 mt), and research catch (8.1 mt), resulting in a fishery HG of 1,642 mt.

kk/ Minor Nearshore Rockfish south. The OFL for the Minor Nearshore Rockfish complex south of 40°10′ N. lat. of 1,288 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Nearshore Rockfish complex is based on a sigma value of 0.36 for category 1 stocks (*i.e.*, gopher rockfish north of 34°27′ N. lat.), a sigma value of 0.72 for category 2 stocks (*i.e.*, blue rockfish north of 34°27′ N. lat., brown rockfish, China rockfish and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,148 mt is the summed contribution of the ABCs for the component species. The ACL of 1,006 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution for blue rockfish north of 34°27′ N. lat. where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 4 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.6 mt), resulting in a fishery HG of 1,002 mt. Blue rockfish south of 42° N. lat. has a species-specific HG set equal to the 40–10-adjusted ACL for the portion of the stock north of 34°27′ N lat. (137.5) plus the ABC contribution for the unassessed portion of the stock south of 34°27′ N. lat. (60.8 mt). The California (*i.e.* south of 42° N. lat.) blue rockfish HG is 198.3 mt.

ll/ Minor Shelf Rockfish south. The OFL for the Minor Shelf Rockfish complex south of 40°10′ N. lat. of 1,919 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the southern Minor Shelf Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (*i.e.*, greenspotted and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,626 mt is the summed contribution of the ABCs for the component species. The ACL of 1,625 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 49 mt is deducted from the ACL to accommodate the incidental open access fishery (9 mt), EFP catch (30 mt), and research catch (9.6 mt), resulting in a fishery HG of 1,576 mt.

mm/ Minor Slope Rockfish south. The OFL of 814 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Slope Rockfish complex is based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.72 for category 2 stocks (*i.e.*, blackgill rockfish, rougheye rockfish, blackspotted rockfish, sharpchin rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 705 mt is the summed contribution of the ABCs for the component species. The ACL of 695 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of blackgill rockfish where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 20 mt is deducted from the ACL to accommodate the incidental open access fishery (17 mt), EFP catch (1 mt), and research catch (2 mt), resulting in a fishery HG of 675 mt. Blackgill rockfish has a species-specific HG set equal to the species' contribution to the 40–10-adjusted ACL. The blackgill rockfish HG is 117 mt.

nn/ Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with species-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed, and include: butter sole, curlfin sole, flathead sole, Pacific sanddab (assessed in 2013, but the assessment results were too uncertain to inform harvest specifications), rock sole, sand sole, and rex sole (assessed in 2013). The Other Flatfish OFL of 9,645 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 7,243 mt is based on a sigma value of 0.72 for category 2 stocks (*i.e.*, rex sole) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.40. The ACL is set equal to the ABC. The ACL is set equal to the ABC since all of the assessed stocks (*i.e.*, Pacific sanddabs and rex sole) were above their target biomass of $B_{25\%}$. 204 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (19 mt), resulting in a fishery HG of 7,039 mt.

oo/ Other Fish. The Other Fish complex is comprised of kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. These species are unassessed. The OFL of 291 mt is the sum of the OFL contributions for kelp greenling off California (the SSC has not approved methods for calculating the OFL contributions for kelp greenling off Oregon and Washington), cabezon off Washington, and leopard shark coastwide. The ABC of 243 mt is the sum of ABC contributions for kelp greenling off California, cabezon off Washington and leopard shark coastwide calculated by applying a P* of 0.45 and a sigma of 1.44 to the OFL contributions for those stocks. The ACL is set equal to the ABC. There are no deductions from the ACL so the fishery HG is equal to the ACL of 243 mt.

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Table 2b. to Part 660, Subpart C – 2016, and Beyond, Allocations by Species or Species Group (weight in metric tons)

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
BOCACCIO a/	S of 40°10' N. lat.	353.7	N/A	85.0	N/A	268.7
CANARY ROCKFISH a/ b/	Coastwide	109.8	N/A	58.5	N/A	51.3
COWCOD a/ c/	S of 40°10' N. lat.	4.0	N/A	1.4	N/A	2.6
DARKBLOTCHED ROCKFISH d/	Coastwide	325.2	95%	308.9	5%	16.3
PETRALE SOLE a/	Coastwide	2,673.4	N/A	2,638.4	N/A	35.0
PACIFIC OCEAN PERCH e/	N of 40°10' N. lat.	149.0	95%	141.6	5%	7.5
YELLOWEYE ROCKFISH a/	Coastwide	13.2	N/A	1.1	N/A	12.1
Arrowtooth flounder	Coastwide	3,241	95%	3,079	5%	162
Chilipepper	S of 40°10' N. lat.	1,595	75%	1,196	25%	399
Dover sole	Coastwide	48,406	95%	45,986	5%	2,420
English sole	Coastwide	6,991	95%	6,642	5%	350
Lingcod	N of 40'10° N. lat.	2,441	45%	1,098	55%	1,342
Lingcod	S of 40'10° N. lat.	937	45%	422	55%	515
Longnose skate a/	Coastwide	1,927	90%	1,734	10%	193
Longspine thornyhead	N of 34°27' N. lat.	2,969	95%	2,820	5%	148
Pacific cod	Coastwide	1,091	95%	1,036	5%	55
Pacific whiting	Coastwide	301,731	100%	301,731	0%	0
Sablefish	N of 36° N. lat.	0	See Table 1 c			
Sablefish	S of 36° N. lat.	1,875	42%	788	58%	1,088
Shortspine thornyhead	N of 34°27' N. lat.	1,667	95%	1,583	5%	83
Shortspine thornyhead	S of 34°27' N. lat.	871	NA	50	NA	821
Splitnose	S of 40°10' N. lat.	1,736	95%	1,649	5%	87
Starry flounder	Coastwide	1,529	50%	764	50%	764
Widow rockfish f/	Coastwide	1,880	91%	1,711	9%	169
Yellowtail rockfish	N of 40°10' N. lat.	5,314	88%	4,677	12%	638
Minor Shelf Rockfish complex a/	N of 40°10' N. lat.	1,880	60.2%	1,132	39.8%	748
Minor Shelf Rockfish complex a/	S of 40°10' N. lat.	1,576	12.2%	192	87.8%	1,384
Minor Slope Rockfish complex	N of 40°10' N. lat.	1,642	81%	1,330	19%	312
Minor Slope Rockfish complex	S of 40°10' N. lat.	675	63%	425	37%	250
Other Flatfish complex	Coastwide	7,039	90%	6,335	10%	704

a/ Allocations decided through the biennial specification process.

b/ 14.0 mt of the total trawl allocation of canary rockfish is allocated to the at-sea whiting fisheries, as follows: 5.8 mt for the mothership fishery, and 8.2 mt for the catcher/processor fishery.

c/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

d/ Consistent with regulations at §660.55(c), 9 percent (27.8 mt) of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 11.7 mt for the shorebased IFQ fishery, 6.7 mt for the mothership fishery, and 9.4 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ Consistent with regulations at §660.55(c), 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

f/ Consistent with regulations at §660.55(c), 500 mt of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 210 mt for the shorebased IFQ fishery, 120 mt for the mothership fishery, and 170 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

BILLING CODE 3510–22–C

* * * * *

■ 4. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ Species	Management area	2015 Shorebased trawl allocation (mt)	2016 Shorebased trawl allocation (mt)
Arrowtooth flounder		3,193.93	3,033.38
BOCACCIO	South of 40°10′ N. lat	81.89	85.02
CANARY ROCKFISH		43.26	44.48
Chilipepper	South of 40°10′ N. lat	1,203.00	1,196.25
COWCOD	South of 40°10′ N. lat	1.44	1.44
DARKBLOTCHED ROCKFISH		285.61	292.81
Dover sole		45,980.80	45,980.80
English sole		9,153.19	6,636.64
Lingcod	North of 40°10′ N. lat	1,133.32	1,083.37
Lingcod	South of 40°10′ N. lat	447.71	421.61
Longspine thornyhead	North of 34°27′ N. lat	2,962.33	2,815.08
Minor Shelf Rockfish complex	North of 40°10′ N. lat	1,091.70	1,096.52
Minor Shelf Rockfish complex	South of 40°10′ N. lat	192.20	192.32
Minor Slope Rockfish complex	North of 40°10′ N. lat	1,219.41	1,229.94
Minor Slope Rockfish complex	South of 40°10′ N. lat	423.99	425.25
Other Flatfish complex		7,670.50	6,315.10
Pacific cod		1,031.41	1,031.41
PACIFIC OCEAN PERCH	North of 40°10′ N. lat	118.45	124.15
Pacific Whiting		112,007.45	126,727.11
PETRALE SOLE		2,539.40	2,633.40
Sablefish	North of 36° N. lat	2,199.37	2,411.24
Sablefish	South of 36° N. lat	719.88	787.50
Shortspine thornyhead	North of 34°27′ N. lat	1,581.49	1,563.44
Shortspine thornyhead	South of 34°27′ N. lat	50.00	50.00
Splitnose rockfish	South of 40°10′ N. lat	1,619.28	1,648.73
Starry flounder		756.85	759.35
Widow rockfish		1,420.62	1,420.62
YELLOWEYE ROCKFISH		1.00	1.08
Yellowtail rockfish	North of 40°10′ N. lat	4,593.15	4,376.67

* * * * *

[FR Doc. 2016–11329 Filed 5–12–16; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE623

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully use the 2016 groundfish total allowable catch specified for the species comprising the deep-water species category in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 15, 2016, through 1200 hours, A.l.t., July 1, 2016.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 31, 2016.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2015–0110, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0110*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS prohibited directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the GOA, effective 1200 hours, A.l.t., April 30, 2016 (May 4, 2016, 81 FR 26745) under § 679.21(d)(6)(i). That action was necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA was reached. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder.

Regulations at § 679.21(d)(4)(iii)(D) require NMFS to combine management of the available trawl halibut PSC limits in the second season (April 1 through July 1) deep-water and shallow-water species fishery categories for use in either fishery from May 15 through June 30 of each year. The combined second seasonal apportionment of Pacific halibut PSC is 810 mt. This includes the deep-water and shallow water Pacific halibut PSC limits carried forward from the first seasonal apportionments (January 20 through April 1). The deep-water and shallow-water Pacific halibut PSC apportionments were established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

As of May 10, 2016, NMFS has determined that there is approximately 135 metric tons of the trawl Pacific halibut PSC limit remaining in the deep-water fishery and shallow-water fishery seasonal apportionments. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2016 groundfish total allowable catch available in the deep-water species fishery category NMFS is terminating the previous closure and is reopening directed fishing for species comprising the deep-water fishery category in the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current harvest of Pacific halibut PSC in the deep-water species trawl fishery the of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for species comprising the deep-water species fishery category in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 10, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the trawl deep-water species fishery in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 31, 2016.

This action is required by § 679.21 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11492 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 94
Monday, May 16, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket No. EERE–2015–BT–CE–0019]

RIN 1990–AA44

Energy Conservation Program: Certification and Enforcement—Import Data Collection; Notice of Reopening of Comment Period

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of reopening of comment period.

SUMMARY: On December 29, 2015, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) in the **Federal Register** proposing that a person importing into the United States any covered product or equipment subject to an applicable energy conservation standard provide, prior to importation, a certification of admissibility to the DOE. DOE is reopening the comment period until June 15, 2016, to provide interested parties with additional time to submit comments.

DATES: The comment period for the notice of proposed rulemaking published on December 29, 2015 (80 FR 81199), has been extended. DOE will accept comments, data, and information in response to the NOPR received no later than June 15, 2016.

ADDRESSES: See the section "Public Participation" for details on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: 202–586–6590. Email: *ashley.armstrong@ee.doe.gov;* or Mr. Steven Goering, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–32, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: 202–286–5691. Email: *steven.goering@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 29, 2015, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking in the **Federal Register** proposing that a person importing into the United States any covered product or equipment subject to an applicable energy conservation standard provide, prior to importation, a certification of admissibility to the DOE. (80 FR 81199) The comment period ended February 12, 2016. On February 17, 2016, after receiving several requests for additional time to prepare and submit comments, DOE reopened the comment period until February 29, 2016. (81 FR 8022) At a public meeting held on February 19, 2016, DOE again received requests for additional time to prepare and submit comments, and reopened the period for submitting comments until March 16, 2016. 81 FR 11686 (Mar. 7, 2016).

DOE wishes to provide interested parties with additional time to submit comments, and is reopening the comment period until June 15, 2016. DOE is particularly interested in receiving comments and views of interested parties concerning how to minimize the burden of data collection to importers of covered products or equipment subject to an applicable energy conservation standard, while at the same time providing DOE with traceability information sufficient to determine whether a covered import is one that the DOE has previously identified as noncompliant with the relevant standard and, if so, to provide U.S. Customs and Border Protection (CBP) "a description of the noncompliant covered import that is sufficient to enable CBP to identify the subject merchandise and refuse admission thereof into the customs territory of the United States." (19 CFR 12.50(c))

In the NOPR, DOE proposed that an importer provide information regarding the importer's most recent submission in DOE's Compliance and Certification Management System (CCMS), specifically the CCMS ticket number, the CCMS attachment identification number assigned to the certification submission, and the line number in the submission corresponding to the basic model certified. Because DOE makes determinations of noncompliance on a basic model basis, identification of the certified basic model number of the covered import would allow DOE to accurately determine whether the covered import belongs to a basic model that has previously been found to be noncompliant with applicable energy conservation standards.

DOE received comments in response to the NOPR suggesting the submission of alternative data elements to achieve its traceability requirements, such as brand and basic model number of the product, or brand and individual model number. One commenter stated that importers may already provide to CBP the model number of the covered products or equipment that they import, such that DOE may be able to rely on this information in lieu of additional information that it may require. Commenters also recommended that DOE allow multiple paths for importers of covered products to provide traceability information for their products.

At the public meeting for the NOPR, DOE stated that it had considered alternatives to its proposal, such as requiring submission of brand and individual model number, or stock keeping unit (SKU). As noted, DOE is seeking a solution that will allow it to confirm that the covered import does not belong to a basic model that DOE has previously found to be noncompliant and is open to offering options for the importer to provide the necessary information in the least burdensome manner.

To this end, DOE seeks comments on potential options to achieving DOE's goal of traceability while minimizing the burden on importers. Among the possibilities DOE is considering, some of which have been suggested by commenters to date, are for importers to provide: The brand name and basic model number of the product or equipment as reported in the most recent CCMS certification submission; the brand name and individual model number of the product or equipment as reported in the most recent CCMS certification submission; or a SKU code, Universal Product Code, International Article Number, or Global Trade Item Number. Generally, DOE seeks comment on the advantage of allowing importers to use any unique identifier of the covered import that is readily available to employees of the importer across the enterprise, whether they interface with CBP or customs brokers or whether they are the employees who file certifications for the importer in CCMS. For DOE to adopt this approach, the importer would have to provide the same identifier in the corresponding CCMS report. DOE also welcomes comments as to other alternatives that would minimize importer burden while still allowing DOE to confirm that a covered import does not belong to a basic model that DOE has previously found to be noncompliant.

Commenters have expressed concern with respect to DOE's proposal to require certain information related to covered products or equipment that are a component of another finished product, due to the fact that an importer may use more than one basic model of component part in its finished product, and may not know which basic model is contained in a given shipment. DOE notes that the purpose of this proposal is to allow quick identification by CBP of a noncompliant product. DOE welcomes comments on alternatives, including alternatives that would reduce importer burden, such as allowing the importer to identify the range of possible component part basic models, but importers should be aware that this approach could potentially result in a greater impact by having CBP stop shipments that may not contain noncompliant products due to the importer's choice to group multiple basic models into a single identifier.

In addition, DOE understands that characterizing its proposed requirement as a "certificate of admissibility" may have created the mistaken impression that it was proposing a conformity assessment procedure as described in the Technical Barriers to Trade Agreement administered by the World Trade Organization. DOE wishes to emphasize, however, that it is not proposing to mandate any additional testing[1] or to require submission of information unnecessarily redundant of that already provided in accordance with those regulations. Instead, DOE only seeks in its proposal to collect the minimum information necessary to trace the covered import to the certified basic model to which it belongs.

Moreover, it is not DOE's intent to delay in any way the importation of any covered product or equipment, aside from that for which DOE has already, separately, made a final determination that the basic model to which the covered import belongs is not compliant with applicable energy conservation standards. The importation of such a product is already prohibited. In addition, DOE notes that, although the information it proposes to collect would allow it to determine whether a covered import has been properly certified to DOE in CCMS, DOE is not proposing to delay the importation of a covered product subject to energy conservation standards solely due to a failure to certify the covered import. With this in mind, DOE welcomes comments on possible alternatives to the term "certification of admissibility" in reference to what is, in essence, a limited collection of information for purposes of traceability.

Finally, DOE seeks comments on alternatives to the proposed compliance date for the rule of 2 years after the date of publication of the final rule in the **Federal Register**, such as a delayed or phased-in compliance date.

DOE will accept comments, data, and information in response to the NOPR received no later than June 15, 2016. DOE will consider any comments in response to the NOPR received by midnight of June 15, 2016, and deems any comments received by that time to be timely submitted. Based on the comments received, DOE will determine whether it will need to issue a supplemental notice of proposed rulemaking or proceed to a final rule.

Public Participation

A. Submission of Comments

Any comments submitted must identify the NOPR for Import Data Collection, and provide docket number EERE–2015–BT–CE–0019 and/or regulatory information number (RIN) number 1990–AA44. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: ImportData2015CE0019@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *regulations.gov.* All documents in the docket are listed in the *regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-CE-0019.* This Web page will contain a link to the docket for this notice on the *regulations.gov* site. The *regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on May 6, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–11468 Filed 5–13–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No.: FAA–2014–1073; Notice No. 16–03]

RIN 2120–AJ89

Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The DOT is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that would have replaced the Orders limiting scheduled operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), and LaGuardia Airport (LGA)

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[1] Existing DOE regulations require testing to ensure compliance with energy conservation standards.

with longer-term limits on scheduled and unscheduled operations at JFK, EWR, and LGA, and requested comment on options to establish a secondary market for the purchase, sale, lease, or trade of slots at these airports, as well as procedures that would codify the review of slot transactions arising from the secondary market for public interest and anti-competitive effects.

DATES: As of May 16, 2016, the NPRM published on January 8, 2015 (80 FR 1274) is withdrawn.

SUPPLEMENTARY INFORMATION: In 2006, the FAA issued an Order imposing temporary limits on operations at LGA (71 FR 77854), and in 2008, issued Orders imposing temporary limits on operations at JFK (73 FR 3510) and EWR (73 FR 29550). These Orders have been extended and are in effect until October 29, 2016. On April 6, 2016, the FAA announced that the current Order at EWR will expire on October 29, 2016, and that EWR will be a Level 2, schedule-facilitated airport under the Worldwide Slot Guidelines effective for the Winter 2016 scheduling season (81 FR 19861). By this same announcement, the FAA indicated that slot-controlled restrictions at JFK and LGA remain necessary and that the FAA will extend these Orders, by separate **Federal Register** notices, until October 27, 2018.

On January 8, 2015, the FAA and DOT published an NPRM (80 FR 1274) that would replace the FAA's Orders limiting scheduled operations at JFK, EWR, and LGA with a long-term comprehensive approach to slot management at these airports. The NPRM proposed the continuation of the limits on scheduled and unscheduled operations in place at each of these airports under the Orders, and would have required use of an allocated slot 80% of the time for the same flight or series of flights. The NPRM also requested public comment about five alternatives for a secondary market for the purchase, sale, lease, or trade of slots and proposed procedures to codify the exercise of DOT's existing authority to review slot transactions for anti-competitive and public interest effects arising from those secondary market transactions that would have been permitted by the implementation of a bulletin board for the proposed secondary market.

Since the FAA and DOT first initiated this rulemaking effort there have been significant changes in circumstances affecting New York City area airports, including changes in competitive effects from ongoing industry consolidation, slot utilization and transfer behavior, and actual operational performance at the three airports. Furthermore, the FAA recently announced that slot controls are no longer needed at EWR (81 FR 19861). The NPRM proposed an approach to manage slots and the efficient use of airspace at JFK, EWR, and LGA that would have treated all three New York City area airports similarly. In light of the changes in market conditions and operational performance, and particularly the potential impact of EWR's change in status, the Department is withdrawing the NPRM to allow for further evaluation of these changes. Withdrawal of this NPRM (80 FR 1274, January 8, 2015) does not preclude the agency from issuing future rulemakings on this issue, nor does it commit the agency to any course of action in the future. The FAA will continue to monitor the operational performance at these airports. Further, if the Department detects unfair or anticompetitive behavior, we will not hesitate to continue to use our existing authority to take corrective action. We will also continue to cooperate with the U.S. Department of Justice on any reviews it undertakes.

Issued under authority provided by 49 U.S.C. 106(f), 40101, 40103, 40105, and 41712 in Washington, DC on May 6, 2016.

Jenny T. Rosenberg,

Acting Assistant Secretary for Aviation and International Affairs.

Nan Shellabarger,

Acting Assistant Administrator for Policy, International Affairs, and Environment.

[FR Doc. 2016–11455 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 117 and 507

[Docket No. FDA–2016–D–1164]

Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food); Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a draft guidance for industry entitled "Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food)." This draft guidance explains our current thinking on how to determine whether a business is a "qualified facility" that is subject to modified requirements under our rule entitled "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food" (the Preventive Controls for Human Food Rule) or under our rule entitled "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals" (the Preventive Controls for Animal Food Rule). This draft guidance also explains our current thinking on how a business would submit Form FDA 3942a attesting to its status as a qualified facility under the Preventive Controls for Human Food Rule and how a business would submit Form FDA 3942b attesting to its status as a qualified facility under the Preventive Controls for Animal Food Rule. We also are announcing an opportunity for public comment on the proposed collection of information embodied in Forms FDA 3942a and 3942b. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and allow 60 days for public comment in response to the notice.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on this draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments by November 14, 2016. Submit either electronic or written comments on the proposed collection of information by July 15, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1164 for "Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food)." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential. Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance and proposed forms to Food and Drug Administration (HFS–681), 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

With regard to this draft guidance for human food facility: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2166.

With regard to this draft guidance for animal food facility: Jeannette Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246.

With regard to this proposed collection of information: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAstaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role industry plays in ensuring the safety of the food supply, including the adoption of modern systems of preventive controls in food production.

Section 103 of FSMA amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 418 (21 U.S.C. 350g) with requirements for hazard analysis and risk-based preventive controls for facilities that produce food for humans or animals. We have established regulations to implement these requirements within subparts C and G of the Preventive Controls for Human Food rule (21 CFR part 117) and within subparts C and E of the Preventive Controls for Animal Food Rule (21 CFR part 507). A business that meets the definition of a "qualified facility" (see 21 CFR 117.3 or 21 CFR 507.3) is subject to modified requirements in § 117.201 of the Preventive Controls for Human Food Rule or in § 507.7 of the Preventive Controls for Animal Food Rule. These modified requirements require the business to submit a form to FDA, attesting to its status as a qualified facility. Section 418(*l*)(2)(B)(ii) of the FD&C Act directs FDA to issue a guidance related to the documents required to be submitted to FDA to show status as a qualified facility.

In accordance with section 418(*l*)(2)(B)(ii) of the FD&C Act, we are announcing the availability of a draft guidance for industry on qualified facility attestation. Section II of this draft guidance explains how to determine whether your business meets the definition of "qualified facility" under the Preventive Controls for Human Food Rule and how to submit Form FDA 3942a: Qualified Facility Attestation for Human Food Facility, attesting to its status as a qualified facility under the Preventive Controls for Human Food Rule. Section III of this draft guidance explains how to determine whether your business meets the definition of "qualified facility" under the Preventive Controls for Animal Food Rule and how to submit Form FDA 3942b: Qualified Facility Attestation for Animal Food Facility, attesting to its status as a qualified facility under the Preventive Controls for Animal Food Rule.

Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we also are publishing this notice of the proposed collection of information set forth in this document and seeking public comment.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food). It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

The draft guidance entitled "Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food)" contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the associated annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food).

Description: This draft guidance describes FDA procedures regarding the submission of attestations as established under both the Preventive Controls for Human Food Rule and Preventive Controls for Animal Food Rule. Proposed forms FDA 3942a and FDA 3942b have been developed for use by a business in reporting its status as a "qualified facility" under the applicable regulations.

Description of Respondents: Respondents to the collection of information are owners, operators or agents in charge of domestic or foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States asserting that a facility is a "qualified facility" under applicable FDA regulations.

We estimate the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section II; Human Food	3942a	37,134	0.5	18,567	0.5 (30 minutes)	9,284
Section III; Animal Food	3942b	1,120	0.5	560	0.5 (30 minutes)	280
Total						9,564

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Consistent with the estimates found in our Preventive Controls for Human Food Rule, we calculate that approximately 37,134 human food facilities will spend approximately 30 minutes (0.5 hour) reporting their status as such to FDA every 2 years. Thus, dividing this figure by 2 to determine the annual burden, we estimate there will be a total of 18,567 responses and a total of 9,284 burden hours associated with this collection element.

Similarly, and consistent with the estimates found in our Preventive Controls for Animal Food Rule, we estimate that approximately 1,120 animal food facilities will spend approximately 30 minutes (0.5 hour) reporting their status as such to FDA every 2 years. Thus, dividing this figure by 2 to determine an annual burden, we estimate there will be a total of 560 responses and a total of 280 burden hours associated with this information collection element.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in part 117 have been approved under OMB control number 0910–0751. The collections of information in part 507 have been approved under OMB control number 0910–0789.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance, including its appendices containing instructions for filling out Forms FDA 3942a and 3942b and the proposed Forms FDA 3942a and 3942b, at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: May 10, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11439 Filed 5–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0185]

RIN 1625–AA08

Special Local Regulation; Beaufort Water Festival, Beaufort, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation on the waters of the Beaufort River, Beaufort, South Carolina, during the

Beaufort Water Festival on July 23, 2016. This action is necessary to ensure safety of life on navigable waters of the United States during the Beaufort Water Festival Air Show. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 15, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0185 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

On March 3, 2016, the Coast Guard received a marine event application for the 2016 Beaufort Water Festival Air Show that will take place from noon to 5 p.m. on July 23, 2016. The purpose of the proposed rule is to ensure safety of life on the navigable waters of the United States during the Beaufort Water Festival Air Show. The legal basis for the proposed rule is the Coast Guard's Authority to establish special local regulations: 33 U.S.C. 1233.

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation on the waters of the Beaufort River, Beaufort, South Carolina during the Beaufort Water Festival Air Show. The event is scheduled to take place on July 23, 2016 from noon to 5 p.m. Approximately 100 spectator vessels are expected to attend the event. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulations would be enforced for only five hours (2) although persons and vessels would not be able to enter, transit through, anchor, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, (5 U.S.C. 601–612), as amended requires Federal agencies to consider the potential impact of regulations on "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: The owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Add a temporary § 100.35T07–0185 to read as follows:

§ 100.35T07–0185 Special Local Regulations; Beaufort Water Festival, Beaufort, SC.

(a) Regulated Area. This rule establishes a special local regulation on certain waters of the Beaufort River, Beaufort, South Carolina. The special local regulation would create a regulated area that will encompass a portion of the waterway that is 700 ft wide by 2600 ft in length on waters of the Beaufort River encompassed within the following points:

32°25′47″ N./080°40′44″ W.,
32°25′41″ N./080°40′14″ W.,
32°25′35″ N./080°40′16″ W.,
32°25′40″ N./080°40′46″ W.,

All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels, except those participating in the Beaufort Water Festival Airshow, or serving as safety vessels, are prohibited from entering, transiting through, anchoring, or remaining within the regulated area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced July 23, 2016 from noon until 5 p.m.

Dated: May 6, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–11471 Filed 5–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2015–0486, FRL–9946–34–OAR]

RIN 2060–AS71

Revision to the Near-Road NO_2 Minimum Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the minimum monitoring requirements for near-road nitrogen dioxide (NO_2) monitoring by removing the existing requirements for near-road NO_2 monitoring stations in Core Based Statistical Areas (CBSAs) having populations between 500,000 and 1,000,000 persons, that are due by January 1, 2017. Current near-road NO_2 monitoring data indicate air quality levels in the near-road environment are well below the National Ambient Air Quality Standards (NAAQS) for the oxides of nitrogen. In light of this information, and due to the relationship between population, traffic, and expected NO_2 concentrations in the near-road environment, it is anticipated that measured near-road NO_2 concentrations in relatively smaller CBSAs (*e.g.,* CBSAs with populations less than 1,000,000 persons) would exhibit similar, and more likely, lower concentrations, than what is being measured in larger urban areas.

DATES: Comments must be received on or before June 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0486, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents made outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2015–0486. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA William J. Clinton (WJC) West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Nealson Watkins, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C304–06, Research Triangle Park, NC 27711; telephone: (919) 541–5522; fax: (919) 541–1903; email: *watkins.nealson@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This action applies to state, territorial, and local air quality management programs that are responsible for ambient air quality monitoring under 40 CFR part 58. Categories and entities potentially regulated by this action include:

Category	NAICS[a] code
State/territorial/local/tribal government	924110

[a] North American Industry Classification System.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *https://www3.epa.gov/ttnamti1/monregs.html.* The TTN provides information and technology exchange in various areas of air pollution control. A redline/strikeout document comparing the proposed revisions to the appropriate sections of the current rules will be provided in the docket.

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  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
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  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
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  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act (NTTAA)
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

On February 9, 2010, the EPA promulgated minimum monitoring requirements for the ambient NO_2 monitoring network in support of the revised NO_2 NAAQS (75 FR 6474; February 9, 2010). The 2010 NO_2 NAAQS revision included a 1-hour standard with a 98th percentile form averaged over 3 years and a level of 100 parts per billion (ppb), reflecting the maximum allowable NO_2 concentration anywhere in an area, while retaining the annual standard of 53 ppb.

As part of the 2010 NO_2 NAAQS rulemaking, the EPA promulgated revisions to requirements for minimum numbers of ambient NO_2 monitors which included new monitoring near major roads in larger urban areas, requirements to characterize NO_2 concentrations representative of wider spatial scales in larger urban areas (area-wide monitors), and monitors intended to characterize NO_2 exposures of susceptible and vulnerable populations. Specifically, the requirements for these minimum monitoring requirements that were promulgated in 2010 were as follows:

(a) The first tier of the ambient NO_2 monitoring network required near-road monitoring.[1] The requirements included the placement of one near-road NO_2 monitoring station in each CBSA with a population of 500,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road. An additional near-road NO_2 monitoring station was required at a second location of expected maximum hourly concentrations for any CBSA with a population of 2,500,000 or more persons, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater Annual Average Daily Traffic (AADT) counts. Based upon 2010 census data and data maintained by the U.S. Department of Transportation Federal Highway Administration on the most heavily trafficked roads in the U.S. (*http://www.fhwa.dot.gov/policyinformation/tables/02.cfm*), approximately 126 near-road NO_2 sites were required within 103 CBSAs nationwide at the time of rule promulgation.

(b) The second tier of the NO_2 network required area-wide NO_2 monitoring,[2] where area-wide means that the monitor is representative of a spatial scale of representativeness of neighborhood scale (0.5 to 4 km in dimension) or larger, as defined in 40 CFR part 58, appendix D, section 1.2. Requirements included the placement of one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected highest NO_2 concentrations representing the neighborhood or larger spatial scales. Based on 2010 census data, approximately 52 area-wide NO_2 sites were required within 52 CBSAs at the time of rule promulgation.

(c) The third tier of the NO_2 minimum monitoring requirements was for the characterization of NO_2 exposure for susceptible and vulnerable populations.[3] The EPA Regional Administrators, in collaboration with states, required a minimum of 40 additional NO_2 monitoring stations nationwide in any area, inside or outside of CBSAs, in addition to the minimum monitoring requirements for near-road and area-wide monitors with a primary focus on siting these monitors in locations with susceptible and vulnerable populations. Monitoring sites intended to satisfy these NO_2 minimum monitoring requirements were required to be submitted to the EPA for approval. Per 40 CFR 58.10 and 58.13, states were required to submit a plan to the EPA for establishing required area-wide NO_2 monitoring sites and those NO_2 monitoring sites intended to represent areas with susceptible and vulnerable populations by July 1, 2012, and ensure that the monitoring stations were operational by January 1, 2013. State and local air monitoring agencies fulfilled the requirements for area-wide monitors and those sites representing areas with susceptible and vulnerable populations on schedule.

The near-road component of the ambient NO_2 monitoring network was also originally required to be completely operational by January 1, 2013. However, in 2012, the EPA proposed (77 FR 64244; October 19, 2012) and then finalized in 2013 (78 FR 16184; March 14, 2013), through a public notice and comment rulemaking, to require that the near-road NO_2 monitoring stations be installed in three phases. The revised installation schedule allowed more time for states to establish the near-road NO_2 network on a schedule consistent with available resources. The revised installation schedule for the near-road

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[1] See 40 CFR part 58, appendix D, section 4.3.2.

[2] See 40 CFR part 58, appendix D, section 4.3.3.

[3] See 40 CFR part 58, appendix D, section 4.3.4.

NO_2 monitoring network was modified to reflect the following:

Phase 1: In CBSAs with a population of 1,000,000 or more persons, one near-road NO_2 monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2013, and that monitor shall be operational by January 1, 2014.

Phase 2: In CBSAs where two near-road NO_2 monitors are required (either because the CBSA has a population of 2,500,000 or more persons, or has a population of 500,000 or more persons plus one or more roadway segments having AADT counts of 250,000 or more), the second near-road NO_2 monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2014, and that monitor shall be operational by January 1, 2015.

Phase 3: In CBSAs with a population of at least 500,000 persons, but less than 1,000,000 persons, one near-road NO_2 monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2016, and the monitor shall be operational by January 1, 2017.

As of April 2016, the EPA estimates that 65 near-road NO_2 monitors are in operation. Tracking of near-road site meta-data indicate that state and local air monitoring agencies have successfully installed these new monitors in the appropriate locations, collectively placing monitors adjacent to highly trafficked roads in their respective CBSAs. The latest available near-road NO_2 monitoring site meta-data can be found at *http://www3.epa.gov/ttn/amtic/nearroad.html.*

II. Proposed Revisions to Near-Road NO_2 Minimum Monitoring Requirements

The EPA is proposing to revise the minimum monitoring requirements for near-road NO_2 monitoring by removing the existing requirement for near-road NO_2 monitoring stations in CBSAs having populations between 500,000 and 1,000,000 persons, also known as Phase 3 of the near-road NO_2 network. This revision is based on the following key technical points:

- The Phase 1 and Phase 2 near-road sites that have been installed to date are located at maximum concentration locations consistent with the guidance in the Near-road NO_2 Monitoring Technical Assistance Document (*http://www3.epa.gov/ttn/amtic/files/nearroad/NearRoadTAD.pdf*) as demonstrated by a detailed examination of site meta-data.
- The higher populated CBSAs that contain these near-road NO_2 sites have higher mobile source emissions and associated indicators, such as Vehicle Miles Traveled (VMTs).
- Ambient concentrations collected at all existing near-road monitoring sites are well below both the annual and 1-hour daily maximum NAAQS levels of 53 ppb and 100 ppb, respectively.

Further information on each of the key points is provided below.

The "Near-road NO_2 Network and Data Analysis" docket memo (docket memo) provides a review and analysis of the characteristics of the existing near-road NO_2 monitoring network and the relationships between NO_2 emissions, population, traffic, and NO_2 concentration data.[4] First, as noted above, the existing near-road NO_2 monitoring sites appropriately characterize the peak NO_2 concentrations that exist in the near-road environment within their respective CBSAs based on a detailed analysis of site metadata. This is an important assertion, as having the whole of the near-road NO_2 network be representative of expected peak, near-road NO_2 concentration in a given CBSA allows for an equitable comparison of near-road data across CBSAs that have near-road monitors. Monitoring agencies have provided a detailed accounting of total traffic volume and fleet mix while also accounting for the available information on congestion patterns, roadway design, terrain, and meteorology that went into their site selection. For example, it is estimated that 55 percent of the near-road sites are adjacent to one of the top five highest trafficked road segments in their respective CBSA, 71 percent are adjacent to one of the top 10 most highly trafficked roads, and 91 percent are adjacent to one of the top 25 most highly trafficked roads. Further, while all sites are within the required distance of 50 meters from their respective target road, state and local air agencies were successful in placing the sites in close proximity to roadway travel lanes. The EPA estimates that 59 percent of the sites are within 20 meters from their respective target road (which was a recommended target distance in the "Near-road NO_2 Monitoring Technical Assistance Document"), 87 percent are within 30 meters, and 96 percent are within 40 meters. Accordingly, the near-road monitoring network is situated to provide measurements that are a good representation of peak near-road NO_2 concentrations that exist in a given CBSA.

Second, higher populated CBSAs have correspondingly more vehicles and vehicle miles traveled, which in turn increases the availability of mobile source emissions that lead to increased opportunity for higher NO_2 concentrations, particularly in the near-road environment. This is evident upon evaluation of national VMT data available from the U.S. Department of Transportation in the State Transportation Statistics 2015 document.[5] A more specific evaluation of VMT by CBSA shows a clear, positive relationship between CBSA population size and VMT. Further, more densely populated CBSAs typically have more individual roads with relatively high traffic volumes than less densely populated CBSA counterparts. Based on this relationship, the EPA notes that higher populated areas correspondingly have more vehicles, which increase the mobile source derived emissions that lead to increased opportunity for higher NO_2 concentrations particularly in the near-road environment.[6]

Third, the analysis of the available near-road NO_2 data from sites having largely complete data in 2013 and 2014, and the 1st, 2nd, and 3rd quarters of 2015, indicate that while the larger CBSAs tend to have higher measured near-road NO_2 concentrations than lesser populated CBSAs, all readings are well below the applicable NO_2 NAAQS levels. This is true for both the annual and 1-hour NO_2 NAAQS, although this correspondence is stronger in the longer term averages of the data (such as the annual mean) compared to the peak 1-hour values for a given time frame.

Due to the phased implementation of the near-road NO_2 network, the initiation of valid data collection varies significantly by location. Accordingly, it is more straight-forward to analyze the data by the years when monitoring commenced, recognizing that the number of operating sites and the resulting data completeness will generally increase with time.

In 2013, four sites with sufficiently complete datasets (75 percent or greater annual completeness) were operational (Boise, ID; Des Moines, IA; Detroit, MI; and St. Louis, MO). Among these sites, the highest 98th percentile 1-hour daily max value was 50 ppb measured in the St. Louis CBSA. The highest annual mean value was 18 ppb measured in the Detroit CBSA.

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[4] Memo to docket located in Docket #EPA–HQ–OAR–2015–0486, document 1, under "Supporting Documents."

[5] *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/state_transportation_statistics/state_transportation_statistics_2015/index.html.*

[6] Although the particular relationship between CBSA population size and any measured or expected near-road NO_2 concentrations is quite strong, the deviations from that expected relationship or trend are explainable. Near-road NO_2 measured concentrations are influenced by a number of known factors such as differences in traffic volumes, fleet mixes, congestion patterns, roadway design, terrain, and meteorology, along with some influence based upon the distance of the monitor to the road and with background NO_2 concentration differences. The influence of these factors is inherently part of the near-road NO_2 network (as referenced in 40 CFR part 58, section 4.3.2), and the measured concentrations at every near-road NO_2 site will always be influenced by any number of these factors to varying degrees in time.

In 2014, there were 21 CBSAs with near-road data meeting 75 percent completeness criteria. The highest 98th percentile 1-hour daily max value was 70 ppb measured in the Denver CBSA. The highest annual mean value was 27 ppb measured in the Los Angeles CBSA.

At the time of development of this proposal, 4th quarter 2015 data were not yet due to be submitted to the EPA. Using the 75 percent completeness criteria applied to the first three calendar quarters of submitted 2015 near-road NO_2 data, there were 42 CBSAs with data suitable for analysis. Of these data, the highest 98th percentile 1-hour daily max value was 72 ppb measured in the New York City CBSA. The highest annual mean value was 26 ppb measured in the Denver CBSA.

All of these data indicate that, to date, no near-road NO_2 site has collected data that are above or are threatening the annual NO_2 NAAQS of 53 ppb or the 100 ppb level of the 98th percentile 1-hour daily maximum value. As noted above, this is true for the larger CBSAs where the highest emissions and VMT exist.

In light of the information presented here and in the docket memo, the EPA is reconsidering the necessity of the third phase of the near-road NO_2 network. In particular, we have revisited the issue of whether the additional burden on state and local air monitoring agencies to operate Phase 3 of the near-road network is needed to provide evidence of compliance with the NO_2 NAAQS in the smaller CBSAs.

Given that measured near-road NO_2 concentrations to date are not approaching the NAAQS levels, even in the most heavily populated CBSAs with monitoring stations adjacent to the most heavily traveled road segments, we have concluded that the likelihood of measuring elevated NO_2 concentrations approaching or exceeding the NAAQS in smaller CBSAs is very small and, therefore, the Phase 3 requirement for near-road monitoring is no longer needed.

The EPA notes that even with the proposed deletion of the Phase 3 near-road requirements, the authority remains for the EPA Regional Administrator to work with states to install additional near-road NO_2 monitors above the minimum requirements (40 CFR part 58, section 4.3.4) in areas that may have concentrations approaching or exceeding the NAAQS. This authority provides a means for additional near-road NO_2 monitors to be installed in any area, such as a CBSA with a population below 1,000,000 persons, where data or other information suggest that near-road NO_2 monitoring might be warranted. Such an action could be based on research or non-regulatory data in an area, situations where an area has high background or area-wide NO_2 concentrations, a desired or needed understanding of near-road NO_2 concentrations and exposures, or in situations where an unusual or unique roadway related exposure to high ambient NO_2 concentrations exists such as an unusually highly trafficked road segment (*i.e.*, a road segment having greater than 250,000 AADT counts) in a relatively smaller CBSA. The EPA views this existing Regional Administrator authority as a means to ensure that near-road NO_2 monitoring will continue to occur where needed, even after the proposed changes to minimum monitoring requirements.

In summary, given the relationships between population, traffic, and expected NO_2 concentrations in the near-road environment, the EPA anticipates that measured near-road NO_2 concentrations in relatively smaller CBSAs (*e.g.*, CBSAs with populations less than 1,000,000 persons) would typically exhibit similar, if not lower, concentrations than what is being measured in larger urban areas. It has also been demonstrated that the available near-road NO_2 data indicate the air quality in the near-road environment is generally well below the NO_2 NAAQS across the network. Accordingly, the EPA is proposing to remove the requirement to install near-road NO_2 monitors in CBSAs having populations between 500,000 and 1,000,000 persons, also known as Phase 3 of the near-road NO_2 network, due by January 1, 2017. This proposed action would also relieve states from being required to document the need for Phase 3 requirements in their Annual Monitoring Network Plans that are due July 1, 2016.

The EPA also proposes to modify the requirement for a second near-road NO_2 monitor in any CBSA having 500,000 or more persons that also had one or more road segments with 250,000 or greater AADT counts to only apply to CBSAs having 1,000,000 or more persons. This is necessary to align all near-road NO_2 monitoring requirements language to only apply to those CBSAs having 1,000,000 persons or more. If there is a case of a relatively smaller CBSA having one or more road segments with 250,000 AADT counts or greater (of which the EPA is not aware), then the Regional Administrator's authority to require additional monitoring might be appropriate to consider and there could be an evaluation of whether monitoring is warranted.

This proposed revision is estimated to relieve requirements for approximately 53 near-road NO_2 monitors, based on 2014 Census Bureau population estimates (*http://www.census.gov/population/metro/*). This action would not modify the requirements for near-road NO_2 monitors in CBSAs having 1,000,000 or more persons and for a second near-road monitor in CBSAs having 2,500,000 or more persons, which collectively comprise what are also known as Phase 1 and Phase 2 of the near-road NO_2 network, respectively. This action also does not modify the existing requirements for area-wide NO_2 monitors or monitoring of NO_2 in areas with susceptible and vulnerable populations. The EPA requests comment on these proposed changes to the minimum monitoring requirements of near-road NO_2 monitors.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The proposed revisions do not add any information collection requirements beyond those imposed by the existing NO_2 monitoring requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action proposes to remove a sub-set of the current air monitoring requirements and, therefore, remove the requirement for the state and local air monitoring agencies to provide evidence of compliance with the NO_2 NAAQS in the near-road environment in CBSAs with less than 1,000,000 persons. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action proposes to reduce the number of required near-road NO_2 monitors to be operated by state and local air monitoring agencies.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This proposed rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive order 13175, the EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets EO 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of the network and data evaluation are contained in the Near-road NO_2 Network and Data Analysis docket memo, which provides a review and analysis of the characteristics of the existing near-road NO_2 monitoring network and the relationships between NO_2 emissions, population, traffic, and NO_2 concentration data. Further, this rule does not modify the existing requirements for near-road monitors required in CBSAs having 1,000,000 or more persons, area-wide NO_2 monitors, or monitoring of NO_2 in areas with susceptible and vulnerable populations.

List of Subjects

40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: May 5, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 58 as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ 1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7405, 7410, 7414, 7601, 7611, 7614, and 7619.

■ 2. Amend § 58.10 by revising paragraph (a)(5)(iv) and removing paragraph (a)(5)(v) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a) * * *

(5) * * *

(iv) A plan for establishing a second near-road NO_2 monitor in any CBSA with a population of 2,500,000 persons or more, or in any CBSA with a population of 1,000,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2014. The plan shall provide for these required monitors to be operational by January 1, 2015.

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■ 3. Amend § 58.13 by revising paragraph (c)(4) and removing paragraph (c)(5) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(c) * * *

(4) January 1, 2015, for a second near-road NO_2 monitor in CBSAs that have a population of 2,500,000 or more persons or a second monitor in any CBSA with a population of 1,000,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts that is required in Appendix D, section 4.3.2 to this part.

* * * * *

4. Appendix D to Part 58 is amended by revising section 4.3.2 to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

4.3.2 Requirement for Near-Road NO_2 Monitors

(a) Within the NO_2 network, there must be one microscale near-road NO_2 monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road with high AADT counts as specified in paragraph 4.3.2(a)(1) of this appendix. An additional near-road NO_2 monitoring station is required for any CBSA with a population of 2,500,000 persons or more, or in any CBSA with a population of 1,000,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts to monitor a second location of expected maximum hourly concentrations. CBSA populations shall be based on the latest available census figures.

(1) The near-road NO_2 monitoring sites shall be selected by ranking all road segments within a CBSA by AADT and then identifying a location or locations adjacent to those highest ranked road segments, considering fleet mix, roadway design,

congestion patterns, terrain, and meteorology, where maximum hourly NO_2 concentrations are expected to occur and siting criteria can be met in accordance with appendix E of this part. Where a state or local air monitoring agency identifies multiple acceptable candidate sites where maximum hourly NO_2 concentrations are expected to occur, the monitoring agency shall consider the potential for population exposure in the criteria utilized to select the final site location. Where one CBSA is required to have two near-road NO_2 monitoring stations, the sites shall be differentiated from each other by one or more of the following factors: Fleet mix; congestion patterns; terrain; geographic area within the CBSA; or different route, interstate, or freeway designation.

(b) Measurements at required near-road NO_2 monitor sites utilizing chemiluminescence FRMs must include at a minimum: NO, NO_2, and NO_X.

* * * * *

[FR Doc. 2016–11507 Filed 5–13–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[Docket No. FRA–2014–0033, Notice No. 2]

RIN 2130–AC48

Train Crew Staffing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: On March 15, 2016, FRA published a Notice of Proposed Rulemaking (NPRM) that would require establishing minimum requirements for the size of train crew staffs depending on the type of operation. FRA is announcing an extension to the comment period and that it will schedule a public hearing in a future notice to provide interested persons an opportunity to comment on the proposal and to discuss further development of the regulation. When FRA schedules the public hearing in a future notice, it will also reopen the comment period for this proceeding to allow additional time for interested parties to submit written comments in response to views or information provided at the public hearing.

DATES: (1) Written Comments: FRA must receive written comments on the proposed rule by June 15, 2016. FRA may consider comments received after that date if possible without incurring additional expense or delay.

(2) FRA received a timely request for a public hearing and will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of that hearing when it is scheduled. When FRA issues the supplemental notice, it will also reopen the comment period for this proceeding to allow additional time for interested parties to submit written comments in response to views or information provided at the public hearing.

ADDRESSES: You may submit comments identified by the docket number FRA–2014–0033 by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC48). Note that FRA will post all comments received without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the "Supplementary Information" section of this document for Privacy Act information about any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Joseph D. Riley, Railroad Safety Specialist (OP)-Operating Crew Certification, U.S. Department of Transportation, Federal Railroad Administration, Mail Stop–25, Room W33–412, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6318, or Alan H. Nagler, Senior Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–309, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6038).

SUPPLEMENTARY INFORMATION:

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Issued in Washington, DC, on May 11, 2016, under the authority set forth in 49 CFR 1.89(b).

Sarah E. Feinberg,

Administrator.

[FR Doc. 2016–11491 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORATION

Surface Transportation Board

49 CFR Parts 1108 and 1115

[Docket No. EP 730]

Revisions to Arbitration Procedures

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) is proposing to amend its arbitration procedures to conform to the requirements of the *Surface Transportation Board Reauthorization Act of 2015.*

DATES: Comments are due by June 13, 2016. Replies are due by July 1, 2016.

ADDRESSES: Comments on this proposal may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 730, 395 E Street SW., Washington, DC 20423–0001. Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site. Information or questions regarding this proposed rule should reference Docket No. EP 730 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm at 202–245–0391. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1800–877–8339.]

SUPPLEMENTARY INFORMATION: Under Section 13 of the STB Reauthorization Act (codified at 49 U.S.C. 11708), the Board must "promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints" that are subject to the Board's jurisdiction. Section 11708 sets forth specific requirements and procedures for the Board's arbitration process. While the Board's existing arbitration regulations are for the most part consistent with the new statutory provisions, certain changes are needed so that the Board's regulations conform to the requirements under § 11708.[1] Accordingly, the Board is proposing to modify its existing arbitration regulations, set forth at 49 CFR 1108 and 1115.8, to conform to the provisions set forth by the statute and to make other minor clarifying changes. The most significant changes in these proposed rules are discussed below.

Eligible Matters. Under section 11708(b), rate disputes (*i.e.,* disputes involving the reasonableness of a rail carrier's rates) are eligible for arbitration. Accordingly, rate disputes would now be added to the list of matters that are eligible for arbitration under the arbitration program, which currently includes disputes relating to demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation. The rules would continue to allow parties to agree to arbitrate most other matters on a case-by-case basis, subject to some exceptions. *See* 49 CFR 1108.4(e). Specifically, the current rules expressly prohibit use of the Board's arbitration process to enforce labor protective conditions; to obtain the grant, denial, stay, or revocation of any license, authorization (*e.g.,* construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters; and to arbitrate matters outside the statutory jurisdiction of the Board. 49 CFR 1108.2(b). In accordance with section 11708(b)(2), two additional matters would be added to the list of matters not eligible for arbitration: Disputes to prescribe for the future any conduct, rules, or results of general, industry-wide applicability; and disputes that are solely between two or more rail carriers.

Rate Disputes. For rate disputes, arbitration is available to the relevant parties only if the rail carrier has market dominance (as determined under 49 U.S.C. 10707). Section 11708(c)(1)(C).[2] Section 10707 states that "the Board shall determine whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies," and it defines market dominance as "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." Section 10707(a), (b). For this reason, as discussed below, the Board proposes a separate timetable for initiating arbitration in rate cases. Nevertheless, the Board recognizes that making arbitration available only after it determines that a rail carrier has market dominance—as required by the statute—may significantly delay the arbitration process. Given that the arbitration process is voluntarily entered into by parties, the Board seeks comment on whether parties should be given the option to concede market dominance when agreeing to arbitrate a rate dispute (thereby forgoing the need for a determination from the Board) or, alternatively, whether the Board should limit the availability of the arbitration process in rate disputes to cases where market dominance is conceded. In addition, the Board seeks comments on other possible approaches that would help facilitate the commencement of arbitrating a rate dispute, given the need to make a market dominance determination under section 10707.

Arbitration Commencement Procedures. The Board's current regulations are consistent with section 11708(c), which makes the arbitration process available only after the Board receives written consent to arbitrate from all relevant parties and after the filing of a written complaint.[3] Under the statute, in lieu of a written complaint, the arbitration process also may be made available "through other procedures adopted by the Board in a rulemaking proceeding." Section 11708(c)(1)(B)(ii)(II). To encourage greater use of arbitration to resolve disputes, the Board proposes here that, as an alternative to filing a written complaint, parties may submit a joint notice to the Board, indicating the consent of both parties to submit an issue in dispute to the Board's arbitration program.[4] The joint notice would allow parties to utilize the arbitration process, even if the dispute is not pending before the Board (assuming that the other criteria for arbitration are met). In the joint notice, parties would state the issue(s) that they are willing to submit to arbitration. The notice would contain a statement that would indicate that all relevant parties are participants in the Board's arbitration program pursuant to § 1108.3(a), or, if they are not participants, that they are nonetheless willing to voluntarily arbitrate a matter pursuant to the Board's arbitration procedures. The notice would indicate whether parties have agreed to a three-member arbitration panel or a single arbitrator (discussed in more detail below). The notice would also indicate the relief requested and whether the parties have mutually agreed to a lower amount of potential liability in lieu of the monetary award cap that would otherwise be applicable.

Monetary Relief Available. In accordance with section 11708(g), the maximum amount of relief that could be awarded under the arbitration program, which is currently capped at $200,000, would be raised to $25,000,000 in rate disputes and $2,000,000 in practice disputes (*i.e.*, disputes involving demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation). The $2,000,000 monetary award cap would also apply to other disputes that parties seek to arbitrate under § 1180.4(e) that are not specifically listed as arbitration-eligible matters (yet also not expressly prohibited). The proposed rules would allow parties to mutually agree to a lower monetary award cap.

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[1] In *Assessment of Mediation & Arbitration Procedures,* EP 699 (STB served May 13, 2013), the Board adopted new rules governing the use of mediation and arbitration to resolve matters before the Board. The rules established a new arbitration program under which shippers and carriers may voluntarily agree in advance to arbitrate certain disputes with clearly defined limits of liability.

[2] Additionally, section 11708(c)(3) requires arbitrator(s) handling rate disputes to "consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues (as determined under § 10704(a)(2))."

[3] Under 49 CFR 1108.5, arbitration commences with a written complaint that contains a statement that the relevant parties are participants in the Board's arbitration program, or that the complainant is willing to arbitrate the dispute pursuant to the Board's arbitration procedures. The respondent's answer to the written complaint must then indicate the respondent's participation in the Board's arbitration program or its willingness to arbitrate the dispute at hand pursuant to the Board's arbitration procedures.

[4] These proposed rules seek to expand, not replace, the current rules set forth at 49 CFR 1180.3 that govern the Board's arbitration program, under which shippers and carriers may voluntarily agree in advance to arbitrate certain disputes.

Arbitrator Roster. Section 11708(f) provides that, unless parties otherwise agree, an arbitrator or panel of arbitrators shall be selected from a roster maintained by the Board. Therefore, we propose rules to establish a process for creating and maintaining a roster of arbitrators and selecting arbitrators from the roster in accordance with the statutory requirements.[5]

Creating and Maintaining the Roster. The Board proposes that an initial roster be compiled by the Chairman, who would seek notice from all interested, qualified persons, as described below, who wish to be placed on the Board's arbitration roster. Under the proposed rules, the Chairman could augment the roster at any time to include other eligible arbitrators and remove from the roster any arbitrators who are no longer available or eligible. The roster would be made available on the Board's Web site. To ensure that the roster remains current, the Chairman would update it every year, seeking public comment on any modifications that should be made to the roster, including updates from arbitrators appearing on the roster to confirm that the biographical information on the file with the Board (as discussed below) remains accurate. Arbitrators who wish to remain on the roster would be required to notify the Board of their continued availability.

Arbitrator Qualifications. Under section 11708(f)(1), arbitrators on the roster must be "persons with rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector." Additionally, under the proposed rules, persons seeking to be included on the roster would be required to have training in dispute resolution and/or experience in arbitration or other forms of dispute resolution. The Chairman shall have discretion as to whether an individual meets the qualifications to be added to the roster. The Board's roster would provide a brief biographical sketch of each arbitrator, including information such as background, experience, and geographical location, as well as general contact information, based on the information supplied by the arbitrator.

The Parties' Selection of Arbitrators. In accordance with section 11708(f)(3)(A), we are proposing revisions to our arbitrator selection process so that, if parties cannot mutually agree on a single arbitrator or lead arbitrator of a panel of arbitrators, the parties would select the single or lead arbitrator from the roster maintained by the Board by alternately striking names from the roster until only one name remains.[6]

To make the strike process more practicable and efficient, we propose that the Board, through the Director of the Office of Proceedings, would provide parties a list of arbitrators culled from the Board's roster. This culled list would include not more than 15 arbitrators to limit the number of strikes each party would have to make. In culling the list, the Board would consider a variety of factors, including relevant background and experience, acceptability, geographical location, and any expressed preferences of the parties. The culled list would have an odd number of arbitrators to ensure that parties have the same number of strikes.

To select the other members for a panel of arbitrators, these rules propose that each party to the dispute would select one additional arbitrator from the roster, regardless of whether the selected arbitrator was included in the culled list or struck from the culled list by another party. *See* section 11708(f)(3)(B).

These proposed rules also provide that parties share the costs incurred by the Board and arbitrators equally, with each party responsible for paying its own legal and other associated arbitration costs, in accordance with section 11708(f)(4).[7]

Arbitration Decisions. These rules propose to modify our current regulations regarding arbitration decisions. In accordance with section 11708(d), an arbitration decision would: (1) Be consistent with sound principles of rail regulation economics; (2) be in writing; (3) contain findings of facts and conclusions; (4) be binding upon the parties; and (5) not have any precedential effect in any other or subsequent arbitration disputes.

In accordance with section 11708(h), if a party appeals an arbitral decision, the Board would review the decision to determine if: (1) The decision is consistent with sound principles of rail regulation economics; (2) a clear abuse of arbitral authority or discretion occurred; (3) the decision directly contravenes statutory authority; or (4) the award limitation was violated.[8]

Initiation of the Arbitration Process and Timelines. Under section 11708(e), deadlines for the selection of arbitrators, the close of the evidentiary process, and the arbitration decision are calculated from the date the Board "initiate[s] . . . the arbitration process," which would occur "not later than 40 days after the date on which a written complaint is filed or through other procedures adopted by the Board in a rulemaking proceeding." Section 11708(c)(1)(D). Specifically, arbitrators must be selected not later than 14 days after the Board decides to initiate the arbitration process. The evidentiary process must be completed not later than 90 days after the date on which the arbitration process is initiated. An arbitration decision must be issued not later than 30 days after the date on which the evidentiary period is closed.

Accordingly, with the exception of rate dispute proceedings, these proposed rules provide that the Board would issue a decision to initiate the arbitration process within 40 days after submission of a written complaint, or the joint notice described above. In rate dispute proceedings, the Board must determine if the rail carrier has market dominance before making the arbitration process available. 49 U.S.C 11708(c)(1)(C). Such a determination would likely require substantial additional time in cases where market dominance is contested. Accordingly, these rules propose that, unless the comments offer persuasive reasons to exclude from the arbitration program rate cases where market dominance is contested, the Board would initiate the arbitration process within 10 days after the Board issues a decision determining that the rail carrier in a rate dispute has market dominance.

After the Board initiates the arbitration process, if parties cannot mutually agree on an arbitrator or lead arbitrator of a panel of arbitrators, the Board would then provide parties with a list of arbitrators within seven days of initiating the arbitration process. Parties would then have seven days to select an arbitrator or panel of arbitrators. Section 11708(e)(1). In accordance with section 11708(e)(2), parties would have 90 days from the initiation date to conclude the evidentiary process, unless a party requests an extension, and the arbitrator or panel of arbitrators, as applicable, grants the extension request. The lead or single arbitrator would then have 30 days from the close of the evidentiary process to issue the decision. Section 11708(e)(3).

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[5] Under our current rules, parties select arbitrators from a list of five neutral arbitrators compiled by the Board for a particular arbitration proceeding. These proposed rules replace the selection process with the process set forth at section 11708(f).

[6] Under the Board's current regulations, a panel of three arbitrators resolves all matters unless parties mutually agree to use a single arbitrator. 49 CFR 1108.6(a).

[7] This rule would replace the current method of cost allotment under 49 CFR 1108.6 and 1108.12.

[8] As discussed below, in *Assessment of Mediation & Arbitration Procedures*, the Board amended the standard of review for arbitration decisions set forth at 49 CFR 1115.8 and inadvertently omitted the standard of review for labor arbitration cases. This decision addresses that omission.

In accordance with section 11708(e)(4), these proposed rules provide that the Board may extend any portion of the timetable upon agreement of all parties in the dispute, thus providing more flexibility than our rules currently allow.[9]

Other Matters. In adopting final rules in *Assessment of Mediation & Arbitration Procedures,* the Board inadvertently omitted the standard of review for labor arbitration cases in 49 CFR 1115.8. It was not the intention of the Board to alter the standard of review for labor arbitration cases. The narrow standard articulated in the final rules, and codified at 49 CFR 1108.11(b), was intended to apply solely to reviews of arbitral decisions brought under 49 CFR pt. 1108.[10] The standard of review articulated in the final rules was not intended to replace the Board's standard of review in labor arbitration cases, which was previously codified at 49 CFR 1115.8. In adopting the new arbitration program, § 1115.8 should have reflected both the standard of review for arbitrations conducted pursuant to 49 CFR pt. 1108 and the standard of review for labor arbitration cases. This decision corrects that omission.

The proposed rules, which would govern arbitration in Board proceedings, are set forth below.

Conclusion

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, generally requires a description and analysis of rules that would have significant economic impact on a substantial number of small entities. In drafting rules an agency is required to: (1) Assess the effect that its regulation would have on small entities; (2) analyze effective alternatives that might minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rules will not have a "significant impact on a substantial number of small entities," 5 U.S.C. 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rules. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The proposed rules, if promulgated, would amend the existing procedures for arbitrating disputes before the Board so that the Board's regulations conform to the statutory requirements under 49 U.S.C. 11708.

Although some carriers and shippers impacted by the proposed rules may qualify as a "small business" within the meaning of 5 U.S.C. 601(3), we do not anticipate that our revised arbitration procedures would have a significant economic impact on a large number of small entities. To the extent that the rules have any impact, it would be to provide faster resolution of a controversy at a lower cost. The relief that could be accorded by an arbitrator would presumably be similar to the relief shippers could obtain through use of the Board's existing formal adjudicatory procedures, and at a greater net value considering that the arbitration process is designed to consume less time and likely will be less costly. Therefore, we do not believe that a substantial number of small entities would be significantly impacted.

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments about each of the proposed collections regarding: (1) Whether the collection of information, as modified in the proposed rule and further described below, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in the Appendix. This proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments received by the Board regarding the information collection will also be forwarded to OMB for its review when the final rule is published.

List of Subjects

49 CFR Part 1108

Administrative practice and procedure, Railroads.

49 CFR Part 1115

Administrative practice and procedure.

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments regarding the proposed rules are due by June 13, 2016. Replies are due by July 1, 2016.

3. This decision is effective on the day of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Decided: May 6, 2016.

Jeffrey Herzig,
Clearance Clerk.

For the reasons set forth in the preamble, under the authority of 49 U.S.C. 1321, title 49, chapter X, parts 1108 and 1115 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1108—ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE STATUTORY JURISDICTION OF THE SURFACE TRANSPORTATION BOARD

■ 1. Revise the authority citation for part 1108 to read as follows:

Authority: 49 U.S.C. 11708, 49 U.S.C. 1321(a) and 5 U.S.C. 571 *et seq.*

■ 2. Amend § 1108.1, as follows:

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[9] This replaces the current regulation at 49 CFR 1108.7(c), which provides that petitions to extend the timetable will only be considered in cases of arbitrator incapacitation.

[10] In the final rules, the Board adopted a standard of review of arbitral decisions made under 49 CFR pt. 1108. The Board stated that, upon petition by one or more parties to the arbitration, the Board reserves the right to review, modify, or vacate any arbitration award. The final rules clarify that the Board will apply a narrow standard of review, but which is somewhat broader than originally proposed, and will grant relief only on grounds that the award reflects a clear abuse of arbitral authority or discretion, or directly contravenes statutory authority.

Assessment of Mediation & Arbitration Procedures, EP 699, slip op. at 17 (STB served May. 13, 2013); *see* 49 CFR 1108.11(b).

■ a. In paragraph (b) add the words "from the roster" after the word "selected" and remove the word "neutral" and add in its place "lead".

■ b. In paragraph (d) add the word "rates," after "subjects:".

■ c. In paragraph (g) add the words "and the Surface Transportation Board Reauthorization Act of 2015," after "1995".

■ d. Revise paragraphs (h) and (i).

■ e. Redesignate paragraphs (j) and (k) as paragraphs (k) and (l).

■ f. Revise newly redesignated paragraph (k).

■ g. Add paragraph (m).

The revisions and addition read as follows:

§ 1108.1 Definitions.

* * * * *

(h) *Lead arbitrator or single arbitrator* means the arbitrator selected by the strike methodology outlined in § 1108.6(c).

(i) *Monetary award cap* means a limit on awardable damages of $25,000,000 in rate disputes, including any rate prescription, and $2,000,000 in practice disputes, unless the parties mutually agree to a lower award cap. If parties bring one or more counterclaims, such counterclaims will be subject to a separate monetary award cap.

* * * * *

(k) *Practice disputes* are disputes involving demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation.

* * * * *

(m) *Rate disputes* are disputes involving the reasonableness of a rail carrier's rates.

■ 3. Amend § 1108.2, as follows:

■ a. In paragraph (a) introductory text remove "$200,000" and add in its place "$25,000,000 in rate disputes, including any rate prescription, and $2,000,000 in other disputes" and remove the word "different" and add in its place "lower".

■ b. In paragraph (a)(1) remove the word "different" and add in its place "lower".

■ c. Revise paragraph (b) to read as follows:

§ 1108.2 Statement of purpose, organization, and jurisdiction.

* * * * *

(b) *Limitations to the Board's Arbitration Program.* These procedures shall not be available:

(1) To resolve disputes involving labor protective conditions;

(2) To obtain the grant, denial, stay or revocation of any license, authorization (*e.g.*, construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters;

(3) To prescribe for the future any conduct, rules, or results of general, industry-wide applicability;

(4) To resolve disputes that are solely between two or more rail carriers.

Parties may only use these arbitration procedures to arbitrate matters within the statutory jurisdiction of the Board.

■ 4. Amend § 1108.3 as follows:

■ a. In paragraph (a) introductory text remove the word "either".

■ b. In paragraph (a)(1)(ii) remove the words "different monetary award cap" and add in their place "lower monetary award cap than the monetary award caps provided in this part."

■ c. Revise paragraph (a)(2).

■ d. Remove paragraph (a)(2)(i).

■ e. Add paragraph (a)(3).

■ f. In paragraph (b), add "itself" after "not" and remove "within that" and add in its place "prior to the end of the".

■ g. In paragraph (c), remove "on a case-by-case basis" and add in its place "only for a particular dispute".

The revision and addition read as follows:

§ 1108.3 Participation in the Board's arbitration program.

* * * * *

(a) * * *

(2) Participants to a proceeding, where one or both parties have not opted into the arbitration program, may by joint notice agree to submit an issue in dispute to the Board's arbitration program. The joint notice must clearly state the issue(s) which the parties are willing to submit to arbitration and the corresponding maximum monetary award cap if the parties desire to arbitrate for a lower amount than the monetary award cap that would otherwise be applicable.

(3) Parties to a dispute may jointly notify the Board that they agree to submit an eligible matter in dispute to the Board's arbitration program, where no formal proceeding has begun before the Board. The joint notice must clearly state the issue(s) which the parties are willing to submit to arbitration and the corresponding maximum monetary award cap if the parties desire to arbitrate for a lower amount than the applicable monetary award cap.

* * * * *

■ 5. Amend § 1108.4 as follows:

■ a. In paragraph (a) add "rates," before the word "demurrage".

■ b. In paragraph (b) introductory text remove "may not exceed" and add in its place "will be subject to" and remove "$200,000" and add in its place "$25,000,000, including any rate prescription," and remove "arbitral proceeding" and add in its place "rate dispute and $2,000,000 per practice dispute".

■ c. In paragraph (b)(1) remove the word "different" and add in its place "lower".

■ d. In paragraph (b)(2) remove the word "different" and add in its place "lower".

■ e. In paragraph (b)(3) remove "$200,000" and add in its place "$25,000,000, including any rate prescription,"; remove "case" and add in its place "rate dispute and $2,000,000 per practice dispute"; and remove "different" and add in its place "lower".

■ f. In paragraph (c) remove the words "arising in a docketed proceeding" and add "for a particular dispute" after "consent to arbitration".

■ g. Amend paragraph (e) by adding a new sentence after the second sentence and remove "which" and add in its place "that".

■ h. Add paragraph (g).

The revision and addition read as follows:

§ 1108.4 Use of arbitration.

* * * * *

(e) * * * Such disputes are subject to a monetary award cap of $2,000,000 or to a lower cap agreed upon by the parties in accordance with paragraph (b)(2) of this section.

(g) *Rate disputes.* Arbitration of rate disputes will only be available to parties if the rail carrier has market dominance as determined by the Board under 49 U.S.C. 10707. In rate disputes, the arbitrator or panel of arbitrators, as applicable, shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues (as determined under 49 U.S.C. 11704(a)(2)).

■ 6. Amend § 1108.5 as follows:

■ a. In paragraph (a) introductory text, add "Except as provided in paragraph (e) of this section," to the beginning of the first sentence, and remove "Arbitration" and add in its place "arbitration".

■ b. In paragraph (a)(1) remove the word "single-neutral" and add in its place "single".

■ c. In paragraph (a)(3) remove the word "different" and add in its place "lower" and remove "$200,000" and add "that would otherwise apply" after "cap".

■ d. In paragraph (b)(1) remove the word "single-neutral" and add in its place "single" wherever it appears.

■ e. In paragraph (b)(1) introductory text, remove the words "the request" and add in their place "that request".

■ f. In paragraph (b)(1)(i) remove the word "single-neutral" and add in its place "single".

■ g. In paragraph (b)(1)(ii) remove the word "single-neutral" and add in its place "single" wherever it appears and remove "§ 1108.6(a)–(c)" and add in its place "§ 1108.6(a)–(d)" and remove the word "matter" and add in its place "case" and add "by the Board" after "adjudication".

■ h. Revise paragraph (b)(2).

■ i. In paragraph (b)(3) remove the word "different" and add in its place "lower" and remove "$200,000" and add in its place " otherwise applicable".

■ j. Revise paragraph (e).

■ j. Add paragraphs (f) and (g).

The revisions and additions are as follows:

§ 1108.5 Arbitration commencement procedures.

* * * * *

(b) * * *

(2) When the complaint limits the arbitrable issues, the answer must state whether the respondent agrees to those limitations or, if the respondent is already a participant in the Board's arbitration program, whether those limitations are consistent with the respondent's opt-in notice filed with the Board pursuant to § 1108.3(a)(1)(i). If the answer contains an agreement to arbitrate some but not all of the arbitration-program-eligible issues in the complaint, the complainant will have 10 days from the date of the answer to advise the respondent and the Board in writing whether the complainant is willing to arbitrate on that basis.

* * * * *

(e) *Jointly-filed notice.* In lieu of a formal complaint proceeding, arbitration under these rules may commence with a jointly-filed notice by parties agreeing to submit an eligible matter in dispute to the Board's arbitration program under § 1108.3(a)(3). The notice must:

(1) Contain a statement that all relevant parties are participants in the Board's arbitration program pursuant to § 1108.3(a), or that the relevant parties are willing to arbitrate voluntarily a matter pursuant to the Board's arbitration procedures, and the relief requested;

(2) Indicate whether parties have agreed to a three-member arbitration panel or a single arbitrator;

(3) Indicate if the parties have agreed to a lower amount of potential liability in lieu of the otherwise applicable monetary award cap.

(f) *Arbitration initiation.* When the parties have agreed upon whether to use a single arbitrator or a panel of arbitrators, the issues(s) to be arbitrated, and the monetary limit to any arbitral decision, the Board shall initiate the arbitration under § 1108.7(a) and provide a list of arbitrators as described in § 1108.6.

(g) *Arbitration agreement.* Shortly after the panel of arbitrators or arbitrator is selected, the parties to arbitration together with the lead or single arbitrator, as applicable, shall create a written arbitration agreement, which at a minimum will state with specificity the issues to be arbitrated and the corresponding monetary award cap to which the parties have agreed. The agreement may also contain other mutually agreed upon provisions.

(1) Any additional issues selected for arbitration by the parties, that are not outside the scope of these arbitration rules as explained in § 1108.2(b), must be subject to the Board's statutory authority.

(2) These rules shall be incorporated by reference into any arbitration agreement conducted pursuant to an arbitration complaint filed with the Board.

■ 7. Amend § 1108.6 as follows:

■ a. In paragraph (a), remove "§ 1108.5(a)(1)" and add in its place "§ 1108.5(a)(1) and agreed to by all parties to the arbitration".

■ b. Revise paragraph (b).

■ c. Revise paragraph (c) introductory text.

■ d. In paragraph (c)(1) remove the word "neutral" wherever it appears and in the second sentence add "lead" in its place.

■ e. Revise paragraph (c)(2).

■ f. Remove paragraph (c)(3).

■ g. Revise paragraph (d).

■ h. Redesignate paragraph (e) as paragraph (f).

■ i. Add a new paragraph (e).

■ j. In newly redesignated paragraph (f)(1) remove "§ 1108.6(b)" and add in its place "§ 1108.6(d)".

■ k. Revise newly redesignated paragraph (f)(2).

The revisions read as follows:

§ 1108.6 Arbitrators.

* * * * *

(b) *Roster.* Arbitration shall be conducted by an arbitrator (or panel of arbitrators) selected, as provided herein, from a roster of persons with rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector. Persons seeking to be included on the roster must have training in dispute resolution and/or experience in arbitration or other forms of dispute resolution. The initial roster of arbitrators shall be established and maintained by the Chairman of the STB, who may augment the roster at any time to include other eligible arbitrators and may remove from the roster any arbitrators who are no longer available. The Board's roster will provide a brief biographical sketch of each arbitrator, including information such as background, experience, and geographical location, as well as general contact information, based on the information supplied by the arbitrator. The roster shall be published on the Board's Web site. The Chairman will update the roster every year. The Chairman will seek public comment on any modifications that should be made to the roster, including requesting the names and qualifications of new arbitrators who wish to be placed on the roster, and updates from arbitrators appearing on the roster to confirm that the biographical information on file with the Board remains accurate. Arbitrators who wish to remain on the roster must notify the Board of their continued availability.

(c) *Selecting the lead arbitrator.* If the parties cannot mutually agree on a lead arbitrator for a panel of arbitrators, the Board, through the Director of the Office of Proceedings, shall provide the parties with a list of not more than 15 arbitrators selected from the Board's roster within seven days of the Board initiating the arbitration process. When compiling a list of arbitrators for a particular arbitration proceeding, the Board will consider a variety of factors, including relevant background and experience, likely acceptability, geographical location, and any expressed preferences of the parties. The parties will have seven days from the date the Board provides them with this list to select a lead arbitrator using a single strike methodology. The list will have an odd number of arbitrators to ensure that parties have the same number of strikes. The complainant will strike one name from the list first. The respondent will then have the opportunity to strike one name from the list. The process will then repeat until one individual on the list remains, who shall be the lead arbitrator.

(c) * * *

(2) The lead arbitrator appointed through the strike methodology shall serve as the head of the arbitration panel and will be responsible for ensuring that the tasks detailed in §§ 1108.7 and 1108.9 are accomplished.

(d) *Party-appointed arbitrators.* The party or parties on each side of an arbitration dispute shall select one arbitrator from the roster, regardless of whether the arbitrator's name appears on the list of 15 potential lead arbitrators and regardless of whether the other party struck the arbitrator's name in selecting a lead arbitrator. The party or parties on each side will have seven days from the date the Board provides them with the list described in paragraph (c) of this section to appoint that side's own arbitrator. Parties on one side of an arbitration proceeding may not challenge the arbitrator selected by the opposing side.

(e) *Use of a single arbitrator.* Parties to arbitration may request the use of a single arbitrator. Requests for use of a single arbitrator must be included in a complaint or an answer as required in § 1108.5(a)(1), or in the joint notice filed under § 1108.5(e). Parties to both sides of an arbitration dispute must agree to the use of a single arbitrator in writing. If the single-arbitrator option is selected, and if parties cannot mutually agree on a single arbitrator, the arbitrator selection procedures outlined in paragraph (c) of this section shall apply.

* * * * *

(f) * * *

(2) If the incapacitated arbitrator was the lead or single arbitrator, the parties shall promptly inform the Board of the arbitrator's incapacitation and the selection procedures set forth in paragraph (c) of this section shall apply.

■ 8. Revise § 1108.7 to read as follows:

§ 1108.7 Arbitration procedures.

(a) *Initiation.* With the exception of rate dispute arbitration proceedings, the Board shall initiate the arbitration process within 40 days after submission of a written complaint or joint notice filed under § 1108.5(e). In arbitrations involving rate disputes, the Board shall initiate the arbitration process within 10 days after the Board issues a decision determining that the rail carrier has market dominance.

(b) *Arbitration evidentiary phase timetable.* Whether the parties select a single arbitrator or a panel of three arbitrators, the lead or single arbitrator shall establish all rules deemed necessary for each arbitration proceeding, including with regard to discovery, the submission of evidence, and the treatment of confidential information, subject to the requirement that this evidentiary phase shall be completed within 90 days from the date on which the arbitration process is initiated, unless a party requests an extension, and the arbitrator or panel of arbitrators, as applicable, grants such extension request.

(c) *Written decision timetable.* The lead or single arbitrator will be responsible for writing the arbitration decision. The unredacted arbitration decision must be served on the parties within 30 days of completion of the evidentiary phase. A redacted copy of the arbitration decision must be served upon the Board within 60 days of the close of the evidentiary phase for publication on the Board's Web site.

(d) *Extensions to the arbitration timetable.* The Board may extend any deadlines in the arbitration timetable provided in this part upon agreement of all parties to the dispute.

(e) *Protective orders.* Any party, on either side of an arbitration proceeding, may request that discovery and the submission of evidence be conducted pursuant to a standard protective order agreement.

§ 1108.9 Decisions.

■ 9. Amend § 1108.9 as follows:

■ a. Revise paragraph (a).

■ b. In paragraph (b) remove the word "neutral" and add in its place "lead or single".

■ c. In paragraph (d) remove the heading "*Neutral arbitrator authority*" and add in its place "*Lead or single arbitrator authority*" and remove the word "neutral" from the first sentence and add in its place "lead or single" and add ", if any," after "what".

■ d. In paragraph (e) remove the word "neutral" wherever it appears and add in its places "lead or single" and remove "§ 1108.7(b)" and add in its place "§ 1108.7(c)".

■ e. In paragraph (f) remove the word "neutral" and add in its place "lead or single".

The revision reads as follows:

§ 1108.9 Decisions.

(a) *Decision requirements.* Whether by a panel of arbitrators or a single arbitrator, all arbitration decisions shall be in writing and shall contain findings of fact and conclusions of law. All arbitration decisions must be consistent with sound principles of rail regulation economics. The arbitrator shall provide an unredacted draft of the arbitration decision to the parties to the dispute, in accordance with § 1108.7.

* * * * *

■ 10. Amend § 1108.11 by revising paragraph (b) introductory text to read as follows.

§ 1108.11 Enforcement and appeals.

* * * * *

(b) *Board's standard of review.* On appeal, the Board's standard of review of arbitration decisions will be narrow. The Board will review a decision to determine if the decision is consistent with sound principles of rail regulation economics, a clear abuse of arbitral authority or discretion occurred; the decision directly contravenes statutory authority; or the award limitation was violated. Using this standard, the Board may modify or vacate an arbitration award in whole or in part.

* * * * *

■ 11. Amend § 1108.12 as follows:

■ a. Revise paragraph (b).

■ b. Remove paragraphs (c) and (d).

§ 1108.12 Fees and costs.

* * * * *

(b) *Costs.* The parties shall share the costs incurred by the Board and arbitrators equally, with each party responsible for paying its own legal and other associated arbitration costs.

PART 1115—APPELLATE PROCEDURES

■ 12. The authority citation for Part 1115 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 1321, 49 U.S.C. 11708.

■ 13. Revise § 1115.8 to read as follows:

§ 1115.8 Petitions to review arbitration decisions.

An appeal of right to the Board is permitted. The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Board, and is subject to the page limitations of § 1115.2(d). For arbitrations authorized under part 1108 of this chapter, the Board's standard of review of arbitration decisions will be narrow, and relief will only be granted on grounds that the decision is inconsistent with sound principles of rail regulation economics, a clear abuse of arbitral authority or discretion occurred, the decision directly contravenes statutory authority, or the award limitation was violated. For labor arbitration decisions, the Board's standard of review is set forth in *Chicago and North Western Transportation Company—Abandonment—near Dubuque & Oelwein, Iowa,* 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers* v. *Interstate Commerce Commission,* 862 F.2d 330 (D.C. Cir. 1988). The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.3(f).

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Information Collection 1

Title: Joint Notice for Request of Arbitration.

OMB Control Number: 2140–XXXX.

Form Number: None.

Type of Review: New collection.

Respondents: Parties seeking to submit to arbitration certain matters before the Board.

Number of Respondents: 5.

Estimated Time per Response: No more than 1 hour.

Frequency of Response: On occasion.

Total Annual Hour Burden: 5 hours.

Total Annual "Non-Hour Burden" Cost: No "non-cost" burdens associated with this collection have been identified.

Needs and Uses: Under 49 CFR 1108.5, arbitration commences with a written complaint that contains a statement that the relevant parties are participants in the Board's arbitration program, or that the complainant is willing to arbitrate the dispute pursuant to the Board's arbitration procedures. The respondent's answer to the written complaint must then indicate the respondent's participation in the Board's arbitration program or its willingness to arbitrate the dispute at hand pursuant to the Board's arbitration procedures.

The Board proposes here, as an alternative to filing a written complaint, that parties may submit a joint notice to the Board, indicating the consent of both parties to submit an issue in dispute to the Board's arbitration program. In the joint notice, parties would state the issue(s) that the parties are willing to submit to arbitration. The notice would also contain a statement that would indicate that all relevant parties are participants in the Board's arbitration program pursuant to § 1108.3(a), or that the relevant parties are willing to arbitrate voluntarily a matter pursuant to the Board's arbitration procedures, and the relief requested. The notice would indicate whether parties have agreed to a three-member arbitration panel or a single arbitrator. And, the notice would indicate whether the parties have mutually agreed to a lower amount of potential liability in lieu of the monetary award cap that would otherwise be applicable. This alternative filing method would encourage greater use of arbitration to resolve disputes at the Board.

Information Collection 2

Title: Arbitrator Roster.

OMB Control Number: 2140–XXXX.

Form Number: None.

Type of Review: New collection.

Respondents: Potential arbitrators.

Number of Respondents: 40.

Estimated Time per Response: No more than 1 hour.

Frequency of Response: Annually.

Total Annual Hour Burden: 40 hours.

Total Annual "Non-Hour Burden" Cost: No "non-cost" burdens associated with this collection have been identified.

Needs and Uses: Under section 11708, the Board must "promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints" that are subject to the Board's jurisdiction. To facilitate this process, the Board's proposed rules would establish a process for creating and maintaining a roster of arbitrators and selecting arbitrators from the roster in accordance with the statutory requirements.

Pursuant to section 11708(f), unless parties otherwise agree, an arbitrator or panel of arbitrators would be selected from a roster maintained by the Board. The Board's roster would provide a brief biographical sketch of each arbitrator, including information such as background, experience, and geographical location, as well as general contact information, based on the information supplied by the arbitrator. Under the proposed rules, an initial roster would be compiled by the Chairman, who would seek notice from all interested, qualified persons who wish to be placed on the Board's arbitration roster. The Chairman could augment the roster at any time to include other eligible arbitrators and remove from the roster any arbitrators who are no longer available or eligible. The roster would be made available to the public on the Board's Web site.

[FR Doc. 2016–11238 Filed 5–13–16; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 81, No. 94

Monday, May 16, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *https://wwwfrusda.gov/main/pts.*

DATES: The meeting will be held on June 22, 2016, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESS: The meeting will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. A conference line is set up for those who would like to listen in by telephone. For the conference call number, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fiords Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Diane L. Olson, RAC Coordinator, by phone at 907–228–4105 or via email at *dianelolson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update members on past RAC projects, and
2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 14, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Diane L. Olson, RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *dianelolson@fsied.us,* or via facsimile to 907–225–8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 5, 2016.

Daryl Bingham,

Acting District Ranger.

[FR Doc. 2016–11208 Filed 5–13–16; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Generic Clearance for Community Resilience Data Collections.

OMB Control Number: 0693–XXXX (New collection).

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 5,000.

Average Hours per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an interview. The overall average response time is expected to be 30 minutes.

Burden Hours: 5,625.

Needs and Uses: In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce (DOC), proposes to conduct a number of surveys both quantitative and qualitative-designed to evaluate our current program evaluation data collections by means of, but not limited to, focus groups, reply cards that accompany product distributions, and Web-based surveys and dialogue boxes that offer customers an opportunity to express their views on the programs they are asked to evaluate. NIST will limit its inquires to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity covered under this request.

Affected Public: Business or other for profit organizations, not-for-profit institutions, individuals or households, Federal government, State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 11, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–11442 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2017 Economic Census Industry Classification Report.

OMB Control Number: 0607–XXXX.

Form Number(s): None. All electronic collection.

Type of Request: New collection.

Number of Respondents: 125,000.

Average Hours per Response: 7 minutes.

Burden Hours: 14,583.

Needs and Uses: The Economic Census and current business surveys represent the primary source of facts about the structure and function of the U.S. economy, providing essential information to government and the business community in making sound decisions. This information helps build the foundation for the calculation of Gross Domestic Product (GDP) and other economic indicators. Crucial to its success is the accuracy and reliability of the Business Register data, which provides the Economic Census and current business surveys with their establishment lists.

Critical to the quality of data in the Business Register is that establishments are assigned an accurate economic classification, based on the North American Industry Classification System (NAICS). The primary purpose of the 2017 Economic Census Industry Classification Report is to meet this need.

New businesses are assigned NAICS codes by the Social Security Administration (SSA); however, many of these businesses cannot be assigned detailed NAICS codes, because insufficient data are provided by respondents on the Internal Revenue Service (IRS) Form SS–4. This report, conducted in fiscal years 2017 and 2018, will mail approximately 125,000 businesses per year that have been partially classified in the economic sectors covered in the Economic Census. Businesses selected for the sample will be asked to provide data on primary business activity in order to assign proper industry classification, thus maintaining proper coverage of the business universe. The activities listed in the Principal Business or Activity question of the questionnaire will vary based upon the partial NAICS code of the establishment at the time of mail out. An example of activities listed under this item is included under the question.

The 2017 Economic Census Industry Classification Report will be used to update the classification codes contained in the Business Register, ensuring establishments will be tabulated in the correct detailed industry for the 2017 Economic Census and in succeeding economic surveys. Information obtained from these establishments will also be included in the Census Bureau's County Business Patterns (CBP) publications. CBP publications provide annual data on establishment counts, employment, and payroll for all sectors of the economy at national, state, and county levels. The failure to collect this information will have an adverse effect on the quality and usefulness of economic statistics provided by the Census Bureau.

Affected Public: Business and other for-profit, Not-for-profit institutions.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 131 and 193.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 11, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–11443 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[1/1/2016 through 5/10/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Custom Gear & Machine, Inc	5466 East Rockton Road, Roscoe, IL 61073.	4/1/2016	The firm manufactures custom machined and ground metal gears.
Photo Solutions, Inc	603 California Avenue, Vernonia, OR 97064.	5/5/2016	The firm manufactures encoder discs, scales, masks, and film.
Precision Composites of Vermont, LLC.	620 Gilman Street, Lyndon Center, VT 05850.	5/10/2016	The firm manufactures formed composite and plastic solutions.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[1/1/2016 through 5/10/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
M&M Automatic Products, Inc	420 Ingham Street, Jackson, MI 49201.	5/10/2016	The firm manufactures crew machining of turned products, including nuts, bolts, washers, bushings, threaded inserts, and spacers.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: May 10, 2016.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–11465 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meetings

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meetings.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for public meetings of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meetings will be held on June 22, 2016, from 12:00 p.m. to 3:00 p.m., and June 23, 2016, from 9:00 a.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meetings on June 22 and 23 will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Research Library (Room 1894), Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services (OSCPBS), International Trade Administration. Phone: (202) 482–1135 or Email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and provides advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *http://trade.gov/td/services/oscpb/supplychain/acscc/.*

Matters to Be Considered: Committee members are expected to continue to discuss the major competitiveness-related topics raised at the previous Committee meetings, including trade and competitiveness; freight movement and policy; information technology and data requirements; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agendas may change to accommodate Committee business. The Office of Supply Chain, Professional & Business Services will post the final detailed agendas on its Web site, *http://trade.gov/td/services/oscpb/supplychain/acscc/,* at least one week prior to the meeting. The meetings will be open to the public and press on a first-come, first-served basis. Space is limited. The public meetings are physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Richard Boll, at (202) 482–1135 or *richard.boll@trade.gov* five (5) business days before the meeting.

Interested parties are invited to submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to the Office of Supply Chain, Professional & Business Services, 1401 Constitution Ave. NW., Room 11014, Washington, DC 20230, or email to *richard.boll@trade.gov.*

For consideration during the meetings, and to ensure transmission to the Committee prior to the meetings, comments must be received no later than 5:00 p.m. EST on June 14, 2016. Comments received after June 14, 2016, will be distributed to the Committee, but may not be considered at the meetings. The minutes of the meetings will be posted on the Committee Web site within 60 days of the meeting.

Dated: May 9, 2016.

Bruce Harsh,

Acting Director, OSCPBS.

[FR Doc. 2016–11496 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE625

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will

be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, June 2, 2016 at 9 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (978) 245–9300; fax: (781) 245–0842.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee plans to review outcomes of the May 16–17, 2016 public workshop on the Management Strategy Evaluation of Atlantic Herring Acceptable Biological Catch control rules; and make any recommendations to the Council. They will also review Plan Development Team work to date on this action that considers revising the Georges Bank haddock catch cap and associated accountability measures and make any recommendations to the Council regarding the development of alternatives. The committee will also review/discuss the herring coverage target alternatives/impacts analysis; and make any recommendations to the Council for preliminary preferred alternatives. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 10, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11431 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE626

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific & Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, June 2, 2016, beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, Boston Logan, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will discuss the Wiedenmann report and how groundfish catch recommendations might be improved. They will receive an update and comment on a plan for the 5-year catch shares review of the scallop LACG ITQ management program. Also on the agenda is an update on NRCC discussions of operational assessment process and schedule. They will discuss other business as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11482 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE627

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 123rd Scientific and Statistical Committee (SSC) meeting and its 166th Council meeting to take actions on fishery management issues in the Western Pacific Region. The Council will also hold meetings of its advisory groups, namely: (1) The Guam Regional Ecosystem Advisory Committee (REAC); (2) Commonwealth of the Northern Mariana Islands (CNMI) REAC; (3) Joint Guam and CNMI Marianas Advisory Panel (AP); (4) Fishery Data Collection and Research Committee (FDCRC); (5) Program Planning and Research Standing Committee; and (6) Executive and Budget Standing Committee.

DATES: The meetings will be held between May 31, 2016 and June 10, 2016. For specific dates, times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 123rd SSC will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220. The Guam

REAC will be held at Hilton Guam Resort and Spa, 202 Hilton Road, Tumon Bay, Guam 96913, phone (671) 646–1835. The CNMI REAC and Joint Guam and CNMI Marianas AP, will be held at Saipan Fiesta Resort and Spa, P.O. Box 501029, Saipan, MP 96950, telephone: (670) 234–6412. The FDCRC, Program Planning and Research Standing Committee, and Executive and Budget Standing Committee will be held at the Hyatt Regency Saipan, Royal Palm Avenue, Micro Beach Road, Garapan, Saipan, MP 96950 Saipan, telephone: (1–670) 234–1234. The first two days of the 166th Council meeting will be held at Saipan Fiesta Resort and Spa, P.O. Box 501029, Saipan, MP 96950, telephone: (670) 234–6412 and the last two days at the Hilton Guam Resort and Spa, 202 Hilton Road, Tumon Bay, Guam 96913, telephone: (671) 646–1835.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The 123rd SSC meeting will be held between 8:30 a.m. and 5 p.m. on May 31–June 2, 2016. The Guam REAC will be held on June 2, 2016. The CNMI REAC on June 3, 2016. The Joint Guam and CNMI Marianas AP meeting will be held between 8:30 a.m. and 4 p.m. on June 4, 2016. The FDCRC will be held between 9 a.m. to 12 p.m. on June 4, 2016. The Program Planning and Research Standing Committee will be held between 1 p.m. to 3 p.m. on June 4, 2016. Executive and Budget Standing Committee will be on June 4, 2016, from 3 p.m. to 5 p.m. The 166th Council meeting will be held from 8:30 to 5 p.m. on June 6–7 and 9–10, 2016.

In addition to the agenda items listed here, the Council and its advisory bodies will hear recommendations from Council advisors. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for 123rd SSC Meeting

Tuesday, May 31, 2016, 8:30 a.m. to 5 p.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 122nd SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Insular Fisheries
   A. Evaluation of the existing Biological Reference Points Project
   B. Jungle histology and size at first maturity for reef fish
   C. Public Comment
   D. SSC Discussion and Recommendations
   Guest Speaker "Scraping Social Media for Unreported Catch"
6. Program Planning
   A. Report on the 2015 Annual/SAFE (Stock Assessment and Fishery Evaluation) Report
   1. Archipelagic Annual/SAFE Report
   2. Pelagic Annual/SAFE Report
   B. Evaluation of 2015 catch to 2015 Annual Catch Limits (ACLs)
   C. Options for revising the risk determination and uncertainty characterization process (Action Item)
   D. Five-year Research Priorities
   E. Climate Change
   1. Pacific Islands Region Climate Action Plan
   2. Pacific Islands Region Fish Stock Climate Vulnerability Assessment
   F. Cooperative Research Program
   1. Cooperative Research Priorities
   2. Cooperative Research Implementation Framework
   G. Public Comment
   H. SSC Discussion and Recommendations

Wednesday, June 1, 2016, 8:30 a.m. to 5 p.m.

7. Pelagic Fisheries
   A. Impact of Effort Limit Area for Purse Seine (ELAPS) on America Samoa Economy
   B. Hawaii Shallow-set Observer Coverage
   C. Results from Hawaii Small Boat Survey 2014
   D. International Fisheries
   1. Eastern Pacific Ocean (EPO) bigeye tuna quota
   2. Western and Central Pacific Fisheries Commission (WCPFC) Issues
   E. International Fishery Meetings
   1. Inter-American Tropical Tuna Commission (IATTC) Science Committee
   2. IATTC General Advisory Committee/Scientific Subcommittee (GAC/SAS) Meeting
   3. IATTC Plenary
   4. Quota tracking for Western and Central Pacific Ocean (WCPO) and EPO bigeye quotas
   F. Public Comment
   G. SSC Discussion and Recommendations
8. Protected Species
   A. Report of the Protected Species Advisory Committee Meeting
   B. Update on Pacific Islands Fisheries Science Center (PIFSC) Marianas Cetacean Surveys
   C. Updates on Endangered Species Act and Marine Mammal Protection Act Actions
   1. Green Turtle Listing Final Rule
   2. Humpback Whale Listing Final Rule
   3. Other Actions
   D. Public Comment
   E. SSC Discussion and Recommendations

Thursday, June 2, 2016, 8:30 a.m. to 5 p.m.

9. Other Business
   A. 124th SSC Meeting
10. Summary of SSC Recommendations to the Council

Agenda for the Guam REAC

Thursday, June 2, 2016, 8:30 a.m. to 3 p.m.

1. Fishery Ecosystem Plan (FEP) Review and Modification Overview
2. Annual Report Modification Overview and Process
3. Highlights from 2015 Annual Report Draft
   A. Fishery Data
   B. Biomass and Life History
   C. Protected Species
   D. Socioeconomics
   E. Habitat
4. WPFMC Committees Review of Annual Report and Recommendations
5. Chapter 3 Data Integration: Initial Discussion
6. Public Comment
7. Other Business
8. REAC Discussion and Recommendations

Agenda for CNMI REAC

Friday, June 3, 2016, 1 p.m. to 5 p.m.

1. FEP Review and Modification Overview
2. Annual Report Modification Overview and Process
3. Highlights from 2015 Annual Report Draft
   A. Fishery Data
   B. Biomass and Life History
   C. Protected Species
   D. Socioeconomics
   E. Habitat
4. WPFMC Committees Review of Annual Report and Recommendations
5. Chapter 3 Data Integration: Initial Discussion
6. Public Comment

7. Other Business
8. REAC Discussion and Recommendations

Agenda for Joint Marianas AP

Saturday, June 4, 2016, 8:30 a.m. to 4 p.m.

1. Welcome and Introductions
2. Outstanding Council Mariana Recommendations
3. Council Issues
   A. Regional Research Needs
   B. Options for Revising the Risk Determination and Uncertainty Characterization Process
4. Mariana Archipelago FEP Community Activities
   A. CNMI
   B. Guam
5. Mariana FEP AP Issues
   A. Report of the Guam Subpanels
   B. Report of the CNMI Subpanels
   C. Other Issues
6. AP Training and Needs
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Agenda for FDCRC

Saturday, June 4, 2016, 9 a.m. to 12 p.m.

1. Welcome Remarks
2. Introductions
3. Update on previous FDCRC recommendations
4. Agency reports on fishery data collection improvement efforts
   A. Western Pacific Fishery Management Council
   B. Pacific Islands Fisheries Science Center
   C. CNMI—Division of Fish and Wildlife
   D. Guam—Division of Aquatic and Wildlife Resources
   E. Guam—Bureau of Statistics and Plans
   F. Hawaii—Division of Aquatic Resources
   G. Am. Samoa—Department of Marine and Wildlife Resources
5. Pacific Islands Fisheries Research Program
   A. Action on the 2016 proposals
6. Alternative summarization and analytics interface
7. Report on the data requirement for the Annual/SAFE reports
8. Report on FDCRC-Technical Committee
   A. Action Items
   B. Recommendations
9. Process for monitoring the regional strategic plan
10. FDCRC technical equivalent of Marine States Fisheries Commission
11. Public Comment
12. Discussions and Recommendations
13. Adjourn

Agenda for Program Planning and Research Standing Committee

Saturday, June 4, 2016, 1 p.m. to 3 p.m.

1. Welcome and introductions
2. Highlights of the 2015 Annual/SAFE Report
   A. Archipelagic Annual/SAFE Report
   B. Pelagic Annual/SAFE Report
3. Evaluation of 2015 catch to 2015 ACLs
4. Options for revising the risk determination and uncertainty characterization process (Action Item)
5. Public Comment
6. Standing Committee Discussion & Recommendations

Agenda for Executive and Budget Standing Committee

Saturday, June 4, 2016, 3 p.m. to 5 p.m.

1. Administrative Report
2. Financial Report
3. Statement of Organization Practices and Procedures
4. Regional Operating Agreement Essential Fish Habitat (EFH) Policy
5. SSC Three Year Plan
6. Meetings and Workshops
7. Council Family Changes
8. Other Issues
9. Public Comment
10. Committee Discussion and Recommendations

Agenda for the 166th Council Meeting

Monday, June 6, 2016, 8:30 a.m. to 5 p.m.

1. Opening Ceremony and Introductions
2. Opening Remarks from Honorable Governor Ralph DLG Torres
3. Approval of the 166th Agenda
4. Approval of the 165th Meeting Minutes
5. Executive Director's Report
6. Agency Reports
   A. National Marine Fisheries Service
   1. Pacific Islands Regional Office
   a. Transfer of submerged lands to CNMI
   b. Draft Monument Management Plan
   2. Pacific Islands Fisheries Science Center
   B. NOAA Regional Counsel
   1. Report on Compact Impact Related to Fishing
   C. U.S. Fish and Wildlife Service
   D. Enforcement
   1. U.S. Coast Guard
   2. NMFS Office for Law Enforcement
   3. NOAA General Counsel for Enforcement and Litigation
   E. Public Comment
   F. Council Discussion and Action
7. Mariana Archipelago—Part 1: CNMI
   A. Arongol Falú
   B. Legislative Report
   C. Enforcement Issues
   D. Report on CNMI Fisheries
   1. Coral Reef Fisheries
   2. Bottomfish Fisheries
   3. Pelagic Fisheries
   E. Report on Bio-Sampling Program
   F. Report on Database Analytics Project
   G. Report on CNMI Projects
   1. Territory Science Initiative
   2. Marine Recreational Improvement Program
   H. Community Activities and Issues
   1. Northern Islands Community-based Marine Resource Management Plan
   I. Education and Outreach Initiatives
   1. Report of the Lunar Calendar
   J. Advisory Group Reports and Recommendations
   K. SSC Recommendations
   L. Public Comment
   M. Council Discussion and Action
8. Program Planning and Research
   A. Highlights of the 2015 Annual/SAFE Report
   1. Archipelagic Annual/SAFE Report
   2. Pelagic Annual/SAFE Report
   B. Evaluation of 2015 catch to 2015 ACLs
   C. Options for Revising the Risk Determination and Uncertainty Characterization Process (Action Item)
   D. Council Five-Year Research Priorities
   E. Cooperative Research Program
   1. Cooperative Research Priorities
   2. Cooperative Research Implementation Framework
   F. Report on National EFH Summit
   G. Regional, National, International Education and Outreach
   H. Advisory Body Reports and Recommendations
   I. SSC Recommendations
   J. Standing Committee Recommendations
   K. Public Hearing
   L. Council Discussion and Action

Monday, June 6, 2016, 6 p.m. to 9 p.m.

Fishers Forum—Data, data everywhere, but not a megabyte to eat.

Tuesday, June 7, 2016, 8:30 a.m. to 5 p.m.

9. Protected Species
   A. Report on the Mariana Islands Sea Turtle Programs
   B. Update on PIFSC Marianas Cetacean Surveys
   C. Updates on Endangered Species Act and Marine Mammal Protection Act Actions
   1. Green Turtle Listing Revision
   2. Humpback Whale Listing Final Rule

  3. Other Actions
  D. Advisory Body Reports and Recommendations
  E. SSC Recommendations
  F. Public Comment
  G. Council Discussion and Action
10. American Samoa Archipelago
  A. Motu Lipoti
  B. Fono Report
  C. Enforcement Issues
  D. Community Activities and Issues
  1. NOAA Pacific Island Regional Planning Body (PIRPB) Meetings Held in American Samoa
  a. PIRPB
  b. American Samoa Planning Team
  c. Public Listening Session
  2. Fagatogo Fish Market Lease
  E. 17th Annual I'a Lapo'a Game Fish Tournament
  F. Education and Outreach Initiatives
  G. Advisory Group Report and Recommendations
  H. SSC Recommendations
  I. Public Comment
  J. Council Discussion and Action
11. Public Comment on Non-Agenda Items

Thursday, June 9, 2016, 8:30 a.m. to 5 p.m.

Welcoming Remarks from the Honorable Governor Eddie Calvo
12. Marianas Archipelago—Part 2: Guam
  A. Isla Informe
  B. Legislative Report
  C. Enforcement Issues
  D. Report on Guam Fisheries
  1. Coral Reef Fisheries
  2. Bottomfish Fisheries
  3. Pelagic Fisheries
  E. Report on Bio-Sampling Program
  F. Guam Sea Turtle Management Plan
  G. Report on Guam Projects and Programs
  1. FAS-Guam Fishing Conflict Study and Report
  2. Coral Reef Fisheries Mapping Project
  H. Community Development Activities and Issues
  1. Malesso Community-based Marine Resource Plan Update
  a. Status of Cocos Lagoon PCB assessment
  b. Resource Monitoring of Cocos Lagoon Marine Resources
  c. Upland and coastal water resource monitoring
  d. Zoning initiative for Cocos Lagoon
  2. Yigo Draft Community-based Marine Resource Plan
  a. Overview of Yigo CBMP plan and outcomes
  b. Community input and feedback
  3. NOAA Habitat Blue Print
  4. Ritidian Point
  a. Proposed Firing Range
  b. National Wildlife Refuge—Access Issues
  I. Education and Outreach Initiatives
  1. Report of the Lunar Calendar Festival
  2. Festival of the Pacific Arts 2016
  J. Advisory Body Reports and Recommendations
  K. SSC Recommendations
  L. Public Comment
  M. Council Discussion and Action
13. Pelagic and International Fisheries
  A. Guam and CNMI Small Vessel Pelagic Fisheries
  B. Impact of ELAPS on America Samoa Economy
  C. Hawaii Shallow-set Observer Coverage (Action Item)
  D. International Fisheries
  1. EPO bigeye tuna quota
  2. WCPFC Issues
  3. Quota tracking for WCPO and EPO bigeye quotas
  E. International Fishery Meetings
  1. IATTC Science Committee
  2. IATTC GAC/SAS Meeting
  3. IATTC Plenary
  F. Advisory Group Reports and Recommendations
  G. SSC Recommendations
  H. Public Hearing
  I. Council Discussion and Recommendations
14. Public Comment on Non-Agenda Items

Thursday, June 9, 2016, 6 p.m. to 9 p.m.

Fishers Forum—Mapping Fishery Resources

Friday, June 10, 2016, 8:30 a.m. to 5 p.m.

15. Hawaii Archipelago
  A. Moku Pepa
  B. Legislative Report
  C. Enforcement
  D. Documenting the History of the Hawaii Bottomfish Fishery
  E. Scraping social media for unreported catch
  F. Community Projects, Activities and Issues
  1. Proposed Expansion Papahanaumokuakea Marine National Monument
  2. Recreational/Non-Commercial Licensing Initiative
  3. Hokulea Voyage—Status update on Council Promise to Pae Aina
  G. Report on the Aha Moku System
  H. Outreach and Education Report
  I. Advisory Body Report and Recommendations
  J. SSC Recommendations
  K. Public Comment
  L. Council Discussion and Action
16. Administrative Matters
  A. Financial Reports
  B. Administrative Reports
  C. Council Policies and Agreements
  1. SOPP Revision
  2. Regional Operating Agreement—EFH Agreement
  3. SSC Operational Guidelines and Three-Year Plan
  D. Council Family Changes
  1. Social Science Planning Committee
  E. Meetings and Workshops
  1. Council Coordination Committee
  2. Other meetings, workshops and conferences
  F. Other Business
  G. Standing Committee Recommendations
  H. Public Comment
  I. Council Discussion and Action
17. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 166th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11480 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE609

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will

hold a meeting of its Outreach and Education Technical Committee.

DATES: The meeting will convene Wednesday, June 1, 2016, from 12 noon to 5 p.m. and Thursday, June 2, 2016, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will take place at the Council's office, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Charlene Ponce, Public Information Officer, Gulf of Mexico Fishery Management Council; *charlene.ponce@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Outreach and Education Technical Committee Agenda

Wednesday, June 1, 2016, 12 noon to 5 p.m.

- Introductions and Adoption of Agenda
- Approval of Minutes
- Election of Officers
- Advisory Panel Orientation
- Overview of current Council outreach/education/communication initiatives
- Discussion—Public Hearing and Scoping Workshop Attendance
- Discussion—Gulf Council Data Portal
- Discussion—Potential for Shared Photo Library
- Overview of Communications Survey

Thursday, June 2, 2016, 8:30 a.m. to 3:30 p.m.

Workshop
- Culturally Sensitive and Targeted Outreach
- Messages that Connect
- Combat Communication for Conservationist
- Other business

— Meeting Adjourns—

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the File Server link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both "gulfguest". Click on the "Library Folder", then scroll down to "O&E Technical Committee".

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Technical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Technical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: May 10, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11429 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE624

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, June 1, 2016 at 10 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (781) 245–9300; fax: (781) 245–0842.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel plans to review outcomes of the May 16–17, 2016 public workshop on the Management Strategy Evaluation of Atlantic Herring Acceptable Biological Catch control rules; and make any recommendations to the Herring Committee. They will also review Plan Development Team work to date on this action that considers revising the Georges Bank haddock catch cap and associated accountability measures and make any recommendations to the Herring Committee regarding the development of alternatives. The panel will also review/discuss the herring coverage target alternatives/impacts analysis; and make any recommendations to the Herring Committee for preliminary preferred alternatives. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 10, 2016.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11430 Filed 5–13–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Proposed Amendment to and Request for Comment on the Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing an amendment to an order issued on March 28, 2013 exempting specified transactions from certain provisions of the Commodity Exchange Act ("CEA" or "Act") and Commission regulations.

DATES: Comments for the Notice of Proposed Order must be received on or before June 15, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov,* Alicia L. Lewis, Special Counsel, 202–418–5862, *alewis@cftc.gov,* or Andrée Goldsmith, Special Counsel, 202–418–6624, *agoldsmith@cftc.gov,* Division of Clearing and Risk; David P. Van Wagner, Chief Counsel, 202–418–5481, *dvanwagner@cftc.gov,* or Riva Spear Adriance, Senior Special Counsel, 202–418–5494, *radriance@cftc.gov,* Division of Market Oversight, in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Overview

The Commission is proposing to amend an order issued on March 28, 2013 pursuant to the authority in section 4(c)(6) of the Act[1] exempting specified electric energy transactions from certain provisions of the CEA and Commission regulations ("RTO–ISO Order").[2] The RTO–ISO Order was issued in response to a consolidated petition from certain regional transmission organizations ("RTOs") and independent system operators ("ISOs"). The RTO–ISO Order exempted contracts, agreements, and transactions for the purchase or sale of the limited electric energy-related products that are specifically described within the RTO–ISO Order from the provisions of the CEA and Commission regulations, with the exception of the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180.[3] The RTO–ISO Order did not specifically note that the exemption contained therein does not apply to actions pursuant to CEA section 22 with respect to those substantive provisions that are excepted from the exemption (*i.e.* the Excepted Provisions). Although the Commission did not intend to provide an exemption from the private right of action in CEA section 22, the Fifth Circuit held that this was the effect of the RTO–ISO Order. The Commission is thus proposing to amend the text of the RTO–ISO Order to explicitly provide that the RTO–ISO Order does not exempt the entities covered under the RTO–ISO Order from the private right of action found in section 22 of the CEA[4] with respect to the Excepted Provisions ("Proposed Amendment"). A copy of the RTO–ISO Order is available at 78 FR 19880, and on the Commission's Web site at *http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-07634a.pdf.*

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I. Relevant Dodd-Frank Provisions[5]

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[6] Title VII of the Dodd-Frank Act amended the CEA and altered the scope of the Commission's exclusive jurisdiction.[7] In particular, it expanded the Commission's exclusive jurisdiction, which had included futures traded, executed, and cleared on CFTC-regulated exchanges and clearinghouses, to also cover swaps traded, executed, or cleared on CFTC-regulated exchanges or clearinghouses.[8] As a result, the Commission's exclusive jurisdiction now includes swaps as well as futures.

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[1] 7 U.S.C. 1 *et seq.*

[2] Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 FR 19880, Apr. 2, 2013. The RTO–ISO Order was published in the **Federal Register** on April 2, 2013.

[3] The foregoing provisions are referred to as the "Excepted Provisions."

[4] 7 U.S.C. 25.

[5] For a fuller discussion, *see* RTO–ISO Order at 19881–82.

[6] *See* Dodd-Frank Act, Pub. L. 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

The Dodd-Frank Act also added a savings clause that addresses the roles of the Commission, the Federal Energy Regulatory Commission ("FERC"), and state regulatory authorities as they relate to certain agreements, contracts, or transactions traded pursuant to the tariff or rate schedule of an RTO or ISO that has been approved by FERC or the state regulatory authority.[9] That savings clause, paragraph (I)(i) of CEA section 2(a)(1), preserves the statutory authority of FERC and state regulatory authorities over agreements, contracts, or transactions entered into pursuant to a tariff or rate schedule approved by FERC or a State regulatory authority, that are (1) not executed, traded, or cleared on an entity or trading facility subject to registration, or (2) executed, traded, or cleared on a registered entity or trading facility owned or operated by an RTO or ISO.[10] However, paragraph (I)(ii) of CEA section 2(a)(1) also preserves the Commission's statutory authority over such agreements, contracts, or transactions.[11]

The Dodd-Frank Act granted the Commission specific powers to exempt certain contracts, agreements, or transactions from duties otherwise required by statute or Commission regulation by adding, as relevant here, new section 4(c)(6) to the CEA. Section 4(c)(6) provides that the Commission shall, if certain conditions are met, issue exemptions from the "requirements" of the CEA for certain transactions entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC or a state regulatory authority.[12]

The Commission must act "in accordance with" sections 4(c)(1) and (2) of the CEA when issuing an exemption under section 4(c)(6).[13] Section 4(c)(1) grants the Commission the authority to exempt any agreement, contract, or transaction or class of transactions, including swaps, from certain provisions of the CEA, in order to promote responsible economic or financial innovation and fair competition.[14] Section 4(c)(2)[15] of the Act further provides that the Commission may not grant exemptive relief unless it determines that: (1) The exemption would be consistent with the public interest and the purposes of the CEA; (2) the transaction will be entered into solely between "appropriate persons" as that term is defined in section 4(c);[16] and (3) the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.[17] In enacting section 4(c), Congress noted that the purpose of the provision is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.[18]

II. Background

A. RTO–ISO Order

On March 28, 2013, the Commission issued the RTO–ISO Order, which exempts specified transactions of particular RTOs and ISOs[19] from certain provisions of the CEA and Commission regulations. The scope of the RTO–ISO Order includes transactions that fall within the definitions of "Financial Transmission Rights," "Energy Transactions," "Forward Capacity Transactions," or "Reserve or Regulation Transactions"[20] (collectively, the "Covered Transactions") and that are offered or sold in a market administered by one of the petitioning RTOs or ISOs pursuant to a tariff, rate schedule, or protocol that has been approved or permitted to take effect by FERC or PUCT.[21] In addition, to be eligible for the exemption in the RTO–ISO Order, all parties to the agreements, contracts, or transactions that are covered by the RTO–ISO Order must be: (1) "Appropriate persons," as defined in section 4(c)(3)(A) through (J) of the CEA; (2) "eligible contract participants," as defined in section 1a(18)(A) of the CEA and in Commission regulation 1.3(m); or (3) in the business of (i) generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system.[22] To be eligible for the exemption in the RTO–ISO Order, the transactions must comply with all other enumerated terms and conditions in the RTO–ISO Order.[23]

In the RTO–ISO Order, the Commission excepted from the exemption the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180.[24] The RTO–ISO Order did not discuss the application of CEA section 22 with respect to those substantive provisions that are excepted from the exemption (*i.e.* the Excepted Provisions).[25]

B. Aspire v. GDF Suez

In February 2015, the United States District Court for the Southern District of Texas dismissed a private lawsuit on the ground that the CEA section 22 private right of action was not available to the plaintiffs under the RTO–ISO

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[7] Section 722(e) of the Dodd-Frank Act.

[8] *See* 7 U.S.C. 2(a)(1)(A). The Dodd-Frank Act also added section 2(h)(1)(A), which requires swaps to be cleared if required to be cleared and not subject to a clearing exception or exemption. *See* 7 U.S.C. 2(h)(1)(A).

[9] *See* 7 U.S.C. 2(a)(1)(I).

[10] 7 U.S.C. 2(a)(1)(I)(i).

[11] *See* 7 U.S.C. 2(a)(1)(I)(ii).

[12] *See* 7 U.S.C. 6(c)(6). CEA section 4(c)(6) provides that the Commission shall issue an exemption only if the Commission determines that the exemption would be consistent with the public interest and the purposes of the Act. Moreover, the Commission must act in accordance with 4(c)(1) and 4(c)(2) when issuing an exemption under section 4(c)(6).

[13] 7 U.S.C. 6(c)(6).

[14] 7 U.S.C. 6(c)(1).

[15] 7 U.S.C. 6(c)(2).

[16] Section 4(c)(3) of the CEA further outlines who may constitute an appropriate person for the purpose of a particular 4(c) exemption and includes, as relevant to the RTO–ISO Order: (a) Any person that qualifies for one of ten defined categories of appropriate persons; or (b) such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

[17] 7 U.S.C. 6(c)(2).

[18] H.R. Rep. No. 102–978, 102d Cong. 2d Sess., 1992 U.S.C.C.A.N. 3179, 3213 (1992).

[19] Six entities (the "Requesting Parties") jointly filed a petition requesting the exemption provided in the RTO–ISO Order: Midwest Independent Transmission System Operator, Inc. ("MISO"), ISO New England, Inc. ("ISO NE"), and PJM Interconnection, L.L.C. ("PJM") are RTOs subject to regulation by FERC; California Independent System Operator Corporation ("CAISO") and New York Independent System Operator, Inc. ("NYISO") are ISOs subject to regulation by FERC; and the Electric Reliability Council of Texas, Inc. ("ERCOT") performs the role of an ISO and is subject to regulation by the Public Utility Commission of Texas ("PUCT"). *See* RTO–ISO Order at 19882.

[20] *See id.* at 19912–13.

[21] *See id.* at 19913. The exemption in the RTO–ISO Order also applies to "any person or class of persons offering, entering into, rendering advice, or rendering other services with respect" to any of the Covered Transactions. *See id.* at 19912. These entities, including the six Requesting Parties (*see supra* note 19) are hereinafter referred to collectively as the "Covered Entities."

[22] *See id.* at 19913–14.

[23] *See id.* at 19912–15.

[24] *See id.* at 19912.

[25] *See id.*

Order.[26] The lawsuit alleged that certain electricity generators in ERCOT's market manipulated the market price of electricity by, among other things, intentionally withholding electricity generation during times of tight supply.[27] The suit further alleged that this conduct created artificial and unpredictable prices in the secondary futures markets.[28] The claim thus alleged that defendants were manipulating contract prices in the derivatives commodities market in violation of the Act.[29] The District Court dismissed the claim, finding that under the RTO–ISO Order, the private right of action in CEA section 22 was "unavailable to [p]laintiffs." [30] In February 2016, the United States Court of Appeals for the Fifth Circuit affirmed the District Court's ruling.[31]

C. Southwest Power Pool Proposed Order

Southwest Power Pool ("SPP") is an RTO subject to regulation by FERC. On October 17, 2013, SPP filed an Exemption Application [32] with the Commission requesting that the Commission exercise its authority under section 4(c)(6) of the CEA [33] and section 712(f) of the Dodd-Frank Act [34] to exempt certain contracts, agreements, and transactions for the purchase or sale of specified electric energy products, that are offered pursuant to a FERC-approved tariff, from most provisions of the Act.[35] The relief that SPP requested was substantially similar to the relief the Commission granted in the RTO–ISO Order.[36]

On May 18, 2015, the Commission issued a proposed order with respect to SPP's Exemption Application ("SPP Proposed Order").[37] The exemptive relief proposed in the SPP Proposed Order was substantially similar to the exemptive relief granted by the Commission in the RTO–ISO Order. Like the RTO–ISO Order, the SPP Proposed Order excepted from the exemption the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated thereunder including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180.[38]

As proposed, the SPP Proposed Order would not exempt SPP from the private right of action under CEA section 22 for violations of the manipulation, fraud, and scienter-based provisions from which SPP will not be exempted. The Commission explained in the SPP Proposed Order that neither the proposed nor the final RTO–ISO Order discussed, referred to, or mentioned CEA section 22, which provides for private rights of action for damages against persons who violate the CEA, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of the Act.[39] The Commission explained that by enacting CEA section 22, Congress provided private rights of action as a means for addressing violations of the Act as an alternative or supplement to Commission enforcement action.[40] The Commission observed that it would be highly unusual for the Commission to reserve to itself the power to pursue claims for fraud and manipulation—a power that includes the option of seeking restitution for persons who have sustained losses from such violations or a disgorgement of gains received in connection with such violations—while at the same time, without explanation, denying private rights of action and damages remedies for the same violations.[41] The Commission stated that if it intended to take such a differentiated approach (*i.e.*, to limit the rights of private persons to bring such claims while reserving to itself the right to bring the same claims), the RTO–ISO Order would have included a discussion or analysis of the reasons therefore.[42] The Commission therefore stated that it did not intend to create such a limitation, and that, in the Commission's view, the RTO–ISO Order does not prevent private claims for fraud or manipulation under the CEA.[43] The Commission further stated that this view would apply equally to the SPP Proposed Order.[44]

The public comment period on the SPP Proposed Order ended on June 22, 2015. The Commission received thirteen (13) comment letters on the SPP Proposed Order,[45] the majority of which argued that the exemptions contained in the RTO–ISO Order extended to include private claims for fraud and manipulation under section 22 of the CEA, and that the exemption in the final SPP exemptive order should also include those private claims.

III. Proposed Amendment

A. Private Right of Action Under CEA Section 22

Currently, Paragraph 1 of the RTO–ISO Order states that the Commission:

> Exempts, subject to the conditions and limitations specified herein, the execution of the electric energy-related agreements, contracts, and transactions that are specified in paragraph 2 of this Order and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto, from all provisions of the CEA, except, in each case, the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180.[46]

Under the RTO–ISO Order, for those CEA requirements from which the RTOs and ISOs are exempt, it follows that there can be no claim under CEA section 22 with respect to those requirements. The RTO–ISO Order did not specifically note that the exemption contained therein does not apply to actions pursuant to CEA section 22 with respect to the Excepted Provisions.

In light of the *Aspire* court ruling discussed above,[47] the Commission is proposing to amend the text of the RTO–ISO Order to clarify that the Covered Entities are not exempt from the private right of action in CEA section 22 with respect to the Excepted Provisions. Specifically, the Commission proposes to amend

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[26] *Aspire Commodities, L.P.* v. *GDF Suez Energy N. Am., Inc.*, No. H–14–1111, 2015 WL 500482 (S.D. Tex. Feb. 3, 2015).

[27] *Id.* at *1–*2.

[28] *Id.* at *2.

[29] *See id.*

[30] *Id.* at *5.

[31] *See Aspire Commodities, L.P.* v. *GDF Suez Energy N. Am., Inc.*, No. 15–20125, 2016 WL 758689 (5th Cir. Feb. 25, 2016).

[32] SPP filed an amended Exemption Application on August 1, 2014. Citations herein to "Exemption Application" are to the amended Exemption Application.

[33] 7 U.S.C. 6(c)(6).

[34] *See* section 712(f) of the Dodd-Frank Act.

[35] *See* Exemption Application at 1. SPP was not one of the entities that petitioned for the RTO–ISO Order because SPP did not at that time offer the types of transactions covered by that order. *See id.* at 7.

[36] *See id.* at 2.

[37] Notice of Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, 80 FR 29490, May 21, 2015. The SPP Proposed Order was published in the **Federal Register** on May 21, 2015.

[38] SPP Proposed Order at 29516.

[39] *Id.* at 29493.

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] All comment letters received in response to the SPP Proposed Order are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1586.*

[46] *See* RTO–ISO Order at 19912.

[47] *See supra* section II.B.

Paragraph 1 of the RTO–ISO Order to read as follows (the additional language is italicized):

> Exempts, subject to the conditions and limitations specified herein, the execution of the electric energy-related agreements, contracts, and transactions that are specified in paragraph 2 of this Order and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto, from all provisions of the CEA, except, in each case, the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180. *This exemption also does not apply to actions pursuant to CEA section 22 with respect to the foregoing enumerated provisions.*[48]

The Commission believes that the treatment of the section 22 private right of action should be consistent across all RTOs and ISOs.[49] The Commission therefore proposes the foregoing amendment to the RTO–ISO Order in order to ensure clarity, and for the additional reasons stated below.

It has been suggested that preserving the private right of action in CEA section 22 would cause regulatory uncertainty or inconsistent or duplicative regulation. However, the Covered Entities will be subject to the same substantive CEA provisions, including judicial interpretations of those provisions, regardless of whether the plaintiff who brings an action alleging a violation of one of those provisions is the Commission or a private party acting under CEA section 22.[50] When such interpretations are necessary in a civil action, the identity of the plaintiff is of little significance. Thus, any potential for conflict among regulators and others or for conflicting judicial interpretations does not depend on whether the plaintiff is a private litigant or the Commission. The Commission also notes that the CFTC frequently participates as *amicus curiae* in cases where significant interpretive issues arise under the CEA. The existence of a private right of action also is not inconsistent with or detrimental to cooperation between the CFTC and FERC. Therefore, amending the RTO–ISO Order to explicitly preserve the private right of action with respect to fraud and manipulation will not cause regulatory uncertainty or duplicative or inconsistent regulation. Moreover, conflicting judicial interpretations regarding the nature of the Covered Transactions would not affect the jurisdiction of FERC or any relevant state regulatory authority.[51]

Second, the private right of action in the CEA is instrumental in protecting the American public, deterring bad actors, and maintaining the credibility of the markets subject to the Commission's jurisdiction. Private claims serve the public interest by empowering injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf. Moreover, the prospect of private rights of action serves the public interest by deterring misconduct in and maintaining the integrity of the markets subject to the Commission's jurisdiction.

Third, the private right of action under CEA section 22 was established by Congress as an integral part of the CEA's enforcement and remedial scheme. The Act grants the Commission various administrative tools to enforce the statute,[52] and it also authorizes the Commission to seek redress in court in the form of injunctions, penalties, and restitution for injured parties.[53] But Congress deemed those tools insufficient, and, in the Futures Trading Act of 1982, codified an express private right of action because it found that private damages actions are "critical to protecting the public and fundamental to maintaining the creditability of the futures market." [54] The Federal Power Act ("FPA"), on the other hand, expressly prohibits private rights of action for fraud and manipulation with respect to the purchase or sale of electric energy subject to FERC's jurisdiction.[55] The fact that Congress made different judgments with respect to a private right of action in the CEA and the FPA does not persuade the Commission to strip injured parties of their remedy under the CEA, nor does it amount to a conflict between the two statutes. The difference between the two statutes in this respect is by Congress's design, subject to the proviso that the Commission is to issue exemptions where it determines exemptions would be in the public interest.[56]

Finally, the Commission's preservation of section 22 liability with respect to the Excepted Provisions is consistent with the Commission's actions in prior 4(c) orders. Section 22 establishes liability for any person "who violates" the Act or "who willfully aids, abets, counsels, induces, or procures the commission of a violation" of the Act.[57]

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[48] The Commission's Proposed Amendment to the RTO–ISO Order does not alter any of the other terms or conditions of the RTO–ISO Order.

[49] One commenter on the SPP Proposed Order expressed the concern that if the final SPP exemptive order contained preamble language to the effect that SPP would not be exempt from the CEA section 22 private right of action, it would be inconsistent with the RTO–ISO Order. In amending the RTO–ISO Order and finalizing the SPP exemptive order, the Commission will ensure that the language of both orders and both preambles is consistent.

[50] For this reason, the Commission does not believe that the Proposed Amendment to the RTO–ISO Order undermines any reasonable reliance interests on the part of the Covered Entities. The affected parties should have been aware of, and complying with, the CEA provisions on fraud and manipulation whether or not a private plaintiff could sue for violating them, because they knew or should have known that the Commission could bring an action to redress violations of those provisions.

[51] To the extent that a court, during a civil proceeding alleging fraud or manipulation under CEA section 22, deems one of the Covered Transactions to be a swap, such a finding would not affect FERC's or PUCT's authority over the Covered Transactions. Section 2(a)(1)(I)(i) of the CEA provides that nothing in the Act shall limit or affect any statutory authority of FERC or a State regulatory authority with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by FERC or a State regulatory authority and is—(1) not executed, traded, or cleared on a registered entity or trading facility; or (2) executed, traded, or cleared on a registered entity or trading facility owned or operated by an RTO] or ISO.

By the terms of the RTO–ISO Order, all of the Covered Transactions must be offered or sold pursuant to a Requesting Party's tariff that has been approved or permitted to take effect by FERC or PUCT (which is a state regulatory authority). *See* RTO–ISO Order at 19913. In addition, the RTO–ISO Order exempts the Covered Entities from registration requirements under the CEA, and the Proposed Amendment does not change that. As a result, none of the Covered Entities is a "registered entity" as defined in CEA section 1a(40). Thus, the Covered Transactions, to the extent they are cleared, would fall within CEA section 2(a)(1)(I)(i)(I). Moreover, to the extent the Covered Transactions are executed or traded on a "trading facility," any such trading facility would be owned or operated by an RTO or ISO, since the Covered Transactions are offered or sold in a market administered (*i.e.,* owned or operated by) one of the Requesting Parties. As such, the Covered Transactions would fall within CEA section 2(a)(1)(I)(i)(II). Therefore, given the savings clause in CEA section 2(a)(1)(I)(i), nothing in the CEA could limit or otherwise affect FERC's or PUCT's authority over the Covered Transactions, regardless of any judicial finding regarding the nature of the Covered Transactions.

[52] *E.g.,* 7 U.S.C. 9(4).

[53] *See* 7 U.S.C. 13a–1.

[54] H.R. Rep. No. 97–565, at 57 (1982).

[55] *See* FPA section 222(a), 16 U.S.C. 824v(a) (prohibiting the use of any manipulative or deceptive device or contrivance in connection with the purchase or sale of electric energy or transmission services subject to the jurisdiction of FERC) and FPA section 222(b), 16 U.S.C. 824v(b) (stating that nothing in that section shall be construed to create a private right of action.).

Under section 306 of the FPA, however, a person or entity may initiate an administrative proceeding with FERC for a violation of the FPA, *see* 16 U.S.C. 825e, and FERC has ruled that a person or entity may initiate an administrative proceeding alleging market manipulation in violation of 16 U.S.C. 824v. *See Blumenthal* v. *ISO New England Inc.,* 128 FERC ¶ 61,182, at para. 56 (Aug. 24, 2009).

[56] *See* 7 U.S.C. 6(c)(6).

[57] 7 U.S.C. 25(a)(1).

The beneficiary of an order under section 4(c) does not violate the Act by noncompliance with CEA requirements from which it is exempt. For instance, in a 4(c) order issued in 2011, the Commission granted temporary exemptive relief from certain provisions of the CEA added or amended by Title VII of the Dodd-Frank Act that referenced certain terms that the Commission had not yet defined.[58] That order expressly stated that exemption from section 22 liability was "not necessary" because, "[t]o the extent that the Final Order provides exemptive relief under CEA section 4(c) [from certain provisions of the CEA], such exemptive relief would, in effect, preclude a person from succeeding in a private right of action under CEA section 22(a) for a violation of such provisions." [59] In other words, no private right of action exists for noncompliance with exempted CEA provisions, as such conduct would not "violate[ ]" the Act within the meaning of section 22. On the other hand, exempting the Covered Entities from private liability for violations of CEA requirements with which they must comply—the prohibitions on fraud and manipulation—would not be consistent with the Commission's actions in prior 4(c) exemptive orders.

Moreover, in prior 4(c) exemptive orders issued by the Commission that reserved anti-fraud and anti-manipulation provisions, the Commission has never reserved its own ability to sue for such behavior while at the same time denying private rights of action for the same conduct.[60] In certain instances, the Commission specifically reserved certain substantive CEA provisions prohibiting fraud and manipulation, but did not include section 22 in that list.[61] In such cases, however, the orders did not explicitly preserve any means of enforcing those prohibitions, including Commission enforcement actions or private lawsuits. The Commission does not believe that these exemptions were intended to preserve the prohibitions on fraud and manipulation but to eliminate any means of enforcing them. Therefore, the Proposed Amendment, which explicitly clarifies that section 22 is reserved with respect to claims for fraud and manipulation, is consistent with the Commission's treatment of such claims in prior 4(c) exemptive orders.[62]

B. Section 4(c) Analysis

1. Overview of CEA Section 4(c)

a. Sections 4(c)(6)(A) and (B)

As discussed above in section I., the Dodd-Frank Act amended CEA section 4(c) to add sections 4(c)(6)(A) and (B), which provide authority to exempt certain transactions "from the requirements" of the CEA entered into: (a) Pursuant to a tariff or rate schedule approved or permitted to take effect by FERC, or (b) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality.[63] Indeed, section 4(c)(6) provides that if the Commission determines that the exemption would be consistent with the public interest and the purposes of the Act, the Commission *shall* issue such an exemption.[64] However, any exemption considered under section 4(c)(6)(A) and/or (B) must be done "in accordance with [CEA section 4(c)(1) and (2)]." [65]

Based on the difference in language between section 4(c)(6), under which the RTO–ISO Order was issued, and section 4(c)(1), the Commission notes that it is not clear that section 4(c)(6) provides the Commission with the authority to exempt the Covered Entities from the private right of action found in section 22. Section 4(c)(1) authorizes the Commission to grant exemptions from the Act's "requirements" or "from any other provision of this Act," with certain exceptions.[66] Section 4(c)(6), by contrast, empowers the Commission to exempt agreements, contracts, or transactions from "requirements" of the Act only. It is not clear that the section 22 private right of action itself is a "requirement" and, therefore, it is not clear that the power to provide an exemption from section 22 is within the scope of the power granted to the Commission by section 4(c)(6).

b. Section 4(c)(1)

As described above,[67] CEA section 4(c)(1) requires that the Commission act by rule, regulation, or order, after notice and opportunity for hearing. It also provides that the Commission may act either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both and that the Commission may provide an exemption from any provisions of the CEA except subparagraphs (C)(ii) and (D) of section 2(a)(1).

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[58] Effective Date for Swap Regulation, 76 FR 42508, Jul. 19, 2011.

[59] *Id.* at 42517.

[60] *See, e.g.,* Exemptive Order for SPDR Gold Futures Contracts, 73 FR 31979, 31979–80, June 5, 2008 (exempting transactions in SPDR gold futures contracts "from those provisions of the Act and the Commission's regulations thereunder that, if the underlying were considered to be a commodity that is not a security, would be inconsistent with the trading and clearing of SPDR gold futures contracts as security futures"); Order: (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The-Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 FR 77015, 77016 n.4, Dec. 18, 2008 (noting that jurisdiction over the subject transactions was retained for the "provisions of the CEA proscribing fraud and manipulation"); Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977, 81979, Dec. 29, 2010 (exempting the trading and clearing of certain products "from the provisions of the CEA and the regulations thereunder, to the extent necessary to permit such products to be so traded and cleared" on SEC-regulated entities).

With respect to the last 4(c) order listed above, the Commission exempted the trading and clearing of the subject transactions from the CEA only "to the extent necessary" to permit them to be traded and cleared on SEC-regulated entities. The Commission notes that this exemption does not extend to the fraud and manipulation provisions of the CEA because it is not "necessary" to act fraudulently or manipulatively in order to trade and clear such contracts on SEC-regulated entities, nor is exemption from the private right of action for acting fraudulently or manipulatively "necessary" to permit the trading and clearing of such contracts on SEC-regulated entities. Moreover, in all of the orders listed above, specific mention of CEA section 22 was not needed because, to the extent the orders did not provide an exemption from the anti-fraud and anti-manipulation provisions of the CEA, any violation of such provisions would be subject to a private right of action.

[61] *See, e.g.,* Exemption for Certain Swap Agreements, 58 FR 5587, 5594, Jan. 22, 1993; Exemption for Certain Contracts Involving Energy Products, 58 FR 21286, 21294, Apr. 20, 1993.

[62] The Commission notes that it has, in two prior 4(c) orders, specifically enumerated section 22 as one of the reserved provisions. *See* A New Regulatory Framework for Clearing Organizations, 65 FR 78020, 78027, Dec. 13, 2000; A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 FR 77962, 77986, Dec. 13, 2000. However, the fact that section 22 was explicitly preserved in two orders but not in others does not provide a counterexample for the proposition that the Commission has never reserved its own ability to sue for fraud and manipulation while at the same time denying private rights of action for the same conduct.

[63] The exemption language in section 4(c)(6) states that if the Commission determines that the exemption would be consistent with the public interest and the purposes of the Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into (A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission; (B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or (C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

[64] 7 U.S.C. 6(c)(6).

[65] 7 U.S.C. 6(c)(6).

[66] 7 U.S.C. 6(c)(1).

[67] *See supra* section I.

c. Section 4(c)(2)

As set forth above in section I., CEA section 4(c)(2) requires the Commission to determine that: To the extent an exemption provides relief from any of the requirements of CEA section 4(a), the requirement should not be applied to the agreement, contract or transaction; the exempted agreement, contract, or transaction will be entered into solely between appropriate persons; [68] and the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.[69]

d. Section 4(c)(3)

As explained in section I. above, CEA section 4(c)(3) outlines who may constitute an appropriate person for the purpose of a 4(c) exemption, including as relevant to the RTO–ISO Order: (a) Any person that fits in one of ten defined categories of appropriate persons; or (b) such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.[70]

2. Section 4(c) Determinations

a. Consistent With the Public Interest and the Purposes of the CEA

As required by CEA section 4(c)(2)(A), as well as section 4(c)(6), the Commission previously determined that the exemption set forth in the RTO–ISO Order is consistent with the public interest and the purposes of the CEA.[71] The Proposed Amendment does not alter the Commission's prior determinations with respect to the public interest and purposes of the CEA, and the Commission proposes to incorporate such prior determinations herein.[72]

In addition, the Commission proposes to determine that the Proposed Amendment to the RTO–ISO Order, which would explicitly preserve the section 22 private right of action with respect to the Excepted Provisions, serves the public interest by helping to deter fraudulent conduct and maintain the credibility of the markets under the Commission's jurisdiction. In the same vein, private civil actions for fraud and manipulation serve the public interest by supplementing the Commission's ability to address the same conduct. Further, the Commission proposes to determine that the Proposed Amendment is consistent with the purposes of the CEA because it will deter and prevent price manipulation or any other disruptions to market integrity.[73]

b. Other 4(c) Determinations

In the RTO–ISO Order, the Commission made a number of other determinations under CEA section 4(c), including:

- The Dodd-Frank Act applies to contracts and instruments traded in RTO or ISO markets pursuant to a FERC- or state-approved tariff or rate schedule, subject to the Commission's authority under CEA section 4(c)(6) to exempt contracts, agreements, or transactions traded pursuant to such a tariff or rate schedule upon determining that the exemption would be in the public interest and consistent with the purposes of the CEA; that the exemption would be applied only to agreements, contracts, or transactions that are entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.[74]
- Due to the FERC or PUCT regulatory scheme and the RTO or ISO market structure already applicable to the Covered Transactions, the linkage between the Covered Transactions and those regulatory schemes, and the unique nature of the market participants that are eligible to rely on the exemption in the RTO–ISO Order, CEA section 4(a) should not apply to the Covered

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[68] *See* 7 U.S.C. 6(c)(2)(B)(i). *See also* the discussion of CEA section 4(c)(3) below.

[69] *See* 7 U.S.C. 6(c)(2)(B)(ii). CEA section 4(c)(2)(A) also requires that the exemption would be consistent with the public interest and the purposes of the CEA, but that requirement duplicates the requirement of section 4(c)(6).

[70] *See* 7 U.S.C. 6(c)(3). CEA section 4(c)(3) provides that the term "appropriate person" shall be limited to the following persons or classes thereof: (A) A bank or trust company (acting in an individual or fiduciary capacity); (B) A savings association; (C) An insurance company; (D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); (E) A commodity pool formed or operated by a person subject to regulation under this Act; (F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph; (G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under this Act; (H) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; (I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) acting on its own behalf or on behalf of another appropriate person; (J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person; (K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

[71] *See* RTO–ISO Order at 19894–95, 19900–02. The Commission's prior determination was based on a number of findings, including that (a) the Covered Transactions have been, and are, subject to a long-standing, regulatory framework for the offer and sale of the Transactions established by FERC or PUCT; (b) the Covered Transactions administered by the RTOs, ISOs, or ERCOT are part of, and inextricably linked to, the organized wholesale electric energy markets that are subject to FERC and PUCT regulation and oversight; (c) the Covered Transactions are entered into primarily by commercial participants that are in the business of generating, transmitting, and distributing electric energy; (d) the Requesting Parties were established for the purpose of providing affordable, reliable electric energy to consumers within their geographic region; (e) the Covered Transactions that take place on the Requesting Parties' markets are overseen by Market Monitoring Units, required by FERC and PUCT to identify manipulation of electric energy on the Covered Entities' markets; (f) the Covered Transactions are inextricably tied to the Requesting Parties' physical delivery of electric energy; (g) the RTO–ISO Order is explicitly limited to Covered Transactions taking place on markets that are monitored by either an independent Market Monitoring Unit, a market administrator (the RTO, ISO, or ERCOT), or both, and a government regulator (FERC or PUCT); (h) the standards set forth in FERC regulation 35.47 appear to achieve goals similar to the regulatory objectives of the Commission's DCO Core Principles, and substantial compliance with such requirements was key to the Commission's determination that the tariffs and activities of the Requesting Parties and supervision by FERC or PUCT are congruent with, and—in the context of the Covered Transactions—sufficiently accomplish, the regulatory objectives of each DCO Core Principle; (i) the Requesting Parties' policies and procedures appear to be consistent with, and to accomplish sufficiently for purposes of the RTO–ISO Order, the regulatory objectives of the DCO Core Principles in the context of the Covered Transactions; and (j) the Requesting Parties' policies and procedures appear to be consistent with, and to accomplish sufficiently for purposes of the RTO–ISO Order, the regulatory objectives of the SEF Core Principles in the context of the Covered Transactions. *Id.*

[72] The Commission notes that, since the Commission did not intend to provide an exemption from the private right of action in CEA section 22 in the RTO–ISO Order, the RTO–ISO Order did not consider or make any determination that it would be in the public interest to do so.

[73] *See* 7 U.S.C. 5(b) (listing the purposes of the CEA).

[74] *See* RTO–ISO Order at 19893–94; *see also* CEA section 4(c)(6).

Transactions under the RTO–ISO Order.[75]

- Eligible contract participants, as defined in section 1a(18)(A) of the CEA and in Commission regulation 1.3(m), are appropriate persons for purposes of the RTO–ISO Order in light of their financial or other qualifications, or the applicability of regulatory protections.[76] In addition, a "person who actively participates in the generation, transmission, or distribution of electric energy," as defined within the RTO–ISO Order, is an appropriate person for purposes of the exemption provided therein.[77]
- The exemption in the RTO–ISO Order for the Covered Transactions would not have a material adverse effect on the Commission's or any contract market's ability to discharge its regulatory function.[78]

The Proposed Amendment does not alter the Commission's determination with respect to any of the above 4(c) determinations. Therefore, the Commission proposes to incorporate such prior 4(c) determinations, and the findings on which such determinations are based, herein. All transactions that were permitted pursuant to the exemption set forth in the RTO–ISO Order would still be permitted under the RTO–ISO Order with the Proposed Amendment. The only change to the RTO–ISO Order made by the Proposed Amendment is that the Proposed Amendment would provide explicitly an additional means of deterring fraudulent or manipulative conduct—conduct that was already prohibited under the RTO–ISO Order—consistent with the public interest and the purposes of the Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that the Commission consider whether the Proposed Amendment to the RTO–ISO Order will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[79] In the RTO–ISO Order, the Commission determined that the RTO–ISO Order would not have a significant economic impact on a substantial number of small entities,[80] and the RFA analysis in the RTO–ISO Order is still valid. Specifically, the RTOs and ISOs covered by the RTO–ISO Order should not be considered small entities based on the central role they play in the operation of the electronic transmission grid and the creation of organized wholesale electric markets that are subject to FERC and PUCT regulatory oversight,[81] analogous to functions performed by DCMs and DCOs, which the Commission has previously determined not to be "small entities." [82] In addition, the RTO–ISO Order, with the amendment proposed herein, includes entities that qualify as (1) "appropriate persons" pursuant to CEA sections 4(c)(3)(A) through (J), (2) ECPs, as defined in CEA section 1a(18)(A) and Commission regulation 1.3(m), or (3) persons who are in the business of: (i) Generating, transmitting, or distributing electric energy, or (ii) providing electric energy services that are necessary to support the reliable operation of the transmission system. The Commission has previously determined that ECPs are not "small entities" for purposes of the RFA.[83] The Commission is of the view that, based on the Commission's existing information about the RTOs' and ISOs' markets, their market participants consist mostly of entities exceeding the thresholds defining "small entities." [84]

Also, the RTO–ISO Order, with the amendment proposed herein, would continue to alleviate the economic impact that the exempt entities, including any small entities that may opt to take advantage of the exemption set forth in the RTO–ISO Order, otherwise would be subjected to by continuing to exempt certain of their transactions from the application of substantive regulatory compliance requirements of the CEA and Commission regulations thereunder. In addition, there is no evidence of any substantial litigation with respect to fraud and manipulation under CEA section 22 in the RTO or ISO markets, particularly against any small entities that opt to take advantage of the exemption set forth in the RTO–ISO Order. Accordingly, the Commission does not expect the RTO–ISO Order, with the Proposed Amendment, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the exemption set forth in the RTO–ISO Order, with the amendment proposed herein, would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 ("PRA") [85] are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, "regardless of form or format," whenever the government is "obtaining, causing to be obtained [or] soliciting" information, and includes and requires "disclosure to third parties or the public, of facts or opinions," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." [86]

The Commission previously determined that the RTO–ISO Order did not impose any new recordkeeping or information collection requirements, or other collections of information on ten or more persons that require OMB approval.[87] The Commission's Proposed Amendment to the RTO–ISO Order does not impose any recordkeeping or information collection requirements, or other collections of information on ten or more persons that require OMB approval.

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[75] *See* RTO–ISO Order at 19895; *see also* CEA section 4(c)(2)(A).

[76] *See* RTO–ISO Order at 19896; *see also* CEA section 4(c)(2)(B)(i).

[77] *See* RTO–ISO Order at 19897; *see also* CEA section 4(c)(2)(B)(i).

[78] *See* RTO–ISO Order at 19903–04; *see also* CEA section 4(c)(2)(B)(ii).

[79] 5 U.S.C. 601 *et seq.*

[80] *See* RTO–ISO Order at 19906–07. The RFA analysis in the RTO–ISO Order determined that the Requesting Parties (CAISO, NYISO, PJM, MISO, ISO NE., and ERCOT) are not small entities. *See id.*

[81] The regulations of the Small Business Administration ("SBA") define the threshold for a small Electric Bulk Power Transmission and Control entity to be 500 employees. *See* 13 CFR 121.201 (Sector 22, Subsector 221; NAICS code 221121). FERC has previously determined under this standard that five of the Requesting Parties (CAISO, NYISO, PJM, MISO, and ISO NE) are not small entities. *See* Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators, 80 FR 58393, 58403, Sept. 29, 2015. Additionally, the Commission understands that ERCOT is not a small entity, as defined by SBA's regulations.

[82] *See* RTO–ISO Order at 19906; *see also* A New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609, Aug. 29, 2001 (DCOs); Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18618–19, Apr. 30, 1982 (DCMs).

[83] *See* RTO–ISO Order at 19906; *see also* Opting Out of Segregation, 66 FR 20740, 20743, Apr. 25, 2001.

[84] *See* RTO–ISO Order at 19907; *see also supra* note 81.

[85] 44 U.S.C. 3501 *et seq.*

[86] 44 U.S.C. 3502(3).

[87] *See* RTO–ISO Order at 19907–08.

C. Cost-Benefit Considerations

1. Consideration of Costs and Benefits

a. Introduction

Section 15(a) of the CEA[88] requires the Commission to "consider the costs and benefits" of its actions before promulgating a regulation under the CEA or issuing certain orders. In proposing this amendment to the RTO–ISO Order, the Commission is required by CEA section 4(c)(6) to ensure the same is consistent with the public interest. In much the same way, section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

As discussed above, the RTO–ISO Order currently exempts contracts, agreements, and transactions for the purchase or sale of the limited electric energy-related products that are specifically described within the RTO–ISO Order from certain provisions of the CEA and Commission regulations, with the exception of the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4*o*, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a) and (b), 32.4, and part 180.[89] The RTO–ISO Order does not specifically note that the exemption contained therein does not apply to actions pursuant to CEA section 22 with respect to the Excepted Provisions. The Commission is proposing to amend the RTO–ISO Order to clarify that the RTO–ISO Order does not exempt the Covered Entities from the private right of action found in section 22 of the CEA with respect to the Excepted Provisions.[90] The Commission's Proposed Amendment to the RTO–ISO Order does not alter any of the other terms or conditions of the RTO–ISO Order.

In the discussion that follows, the Commission considers the costs and benefits of the Proposed Amendment to the RTO–ISO Order to the public and market participants generally, and to the Covered Entities specifically. It also considers the costs and benefits of the Proposed Amendment in light of the public interest factors enumerated in CEA section 15(a).

b. Proposed Baseline

The Commission's proposed baseline for consideration of the costs and benefits of the Proposed Amendment to the RTO–ISO Order is the costs and benefits that the public and market participants would experience if the existing RTO–ISO Order is interpreted to exempt market participants from liability under the CEA section 22 private right of action.

In the discussion that follows, where reasonably feasible, the Commission endeavors to estimate quantifiable dollar costs of the Proposed Amendment to the RTO–ISO Order. The costs and benefits of the Proposed Amendment, however, are not presently susceptible to meaningful quantification. Where it is unable to quantify, the Commission discusses proposed costs and benefits in qualitative terms.

c. Benefits

Using the hypothetical baseline described above,[91] the Commission notes that preserving the CEA section 22 private right of action with respect to fraud and manipulation will benefit the market because private claims for fraud and manipulation protect market participants and the public generally, as well as the financial markets for electric energy products. Moreover, making the preservation of the CEA section 22 private right of action with respect to fraud and manipulation explicit will benefit the market because it will clarify the scope of the RTO–ISO Order and prevent future uncertainty regarding the availability of the private right of action under CEA section 22 with respect to fraud and manipulation.

d. Costs

Using the hypothetical baseline described above,[92] the Commission recognizes that subjecting market participants to the CEA section 22 private right of action with respect to fraud and manipulation may increase legal and compliance costs due to a marginally increased chance of litigation, particularly to the extent that private counsel may pursue litigation based upon private, rather than public, concerns. However, this is a common criticism of private rights of action generally, and the Commission does not believe that such a possibility is a sufficient reason to exempt the Covered Transactions and Covered Entities from the private right of action that Congress explicitly provided for by statute. Thus, the Commission elects to propose to amend the RTO–ISO Order to expressly retain the CEA section 22 private right of action with respect to Excepted Provisions.

e. Consideration of Alternatives

The Commission considered not issuing the Proposed Amendment to the RTO–ISO Order. The Commission considered the uncertainty that has arisen with respect to the scope of the RTO–ISO Order and the availability of a private right of action under the RTO–ISO Order, particularly following the court rulings in the *Aspire* v. *GDF Suez* action,[93] and proposes to determine that a no-amendment alternative would prolong such uncertainty and thus be contrary to the public interest.

The Commission also considered the costs and benefits of amending the RTO–ISO Order to explicitly exempt the CEA section 22 private right of action with respect to fraud and manipulation. In the absence of the availability of a private right of action to address fraudulent and manipulative conduct, the potential for market disruption would increase since market participants would not be able to address such conduct through private claims. On the other hand, the costs of private litigation would be avoided under this alternative. The Commission has considered these costs and benefits and has declined to elect the alternative of explicitly exempting the Covered Entities from the CEA section 22 private right of action.

The Commission has considered the costs and benefits of retaining the CEA section 22 private right of action with respect to fraud and manipulation that the Commission determined to except from the RTO–ISO Order, and has elected to propose to amend the RTO–ISO Order to expressly retain the CEA section 22 private right of action with respect to the Excepted Provisions.

2. Consideration of CEA Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that the Proposed Amendment, by clarifying the existence of a private right of action with respect to fraud and manipulation, will serve to protect market participants and the public because private actions for fraud and manipulation will help to deter misconduct in and maintain credibility of the markets subject to Commission jurisdiction.

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[88] 7 U.S.C. 19(a).

[89] *See* RTO–ISO Order at 19912.

[90] *See supra* section III.A.

[91] *See supra* section IV.C.1.b.

[92] *See supra* section IV.C.1.b.

[93] *See supra* section II.B.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission does not believe that the Proposed Amendment will have an effect on the efficiency, competitiveness, and financial integrity of the futures markets.

c. Price Discovery

The Commission does not believe that the Proposed Amendment will have an effect on price discovery.

d. Sound Risk Management Practices

The Commission does not believe that the Proposed Amendment will have a material effect on sound risk management practices.

e. Other Public Interest Considerations

The Commission does not believe that there are any additional public interest considerations with respect to the Proposed Amendment.

3. Request for Public Comment on Costs and Benefits

The Commission invites public comment on its cost-benefit considerations of the Proposed Amendment to the RTO–ISO Order, including the consideration of reasonable alternatives. Commenters are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

V. Request for Comment on the Proposed Amendment to the RTO–ISO Order

The Commission requests comment on all aspects of its Proposed Amendment to the RTO–ISO Order. In addition, the Commission specifically requests comment on the specific provisions and issues highlighted in the discussion above and on the issues presented in this section. For each comment submitted, please provide a detailed rationale supporting the response.

1. To the extent there are concerns that explicitly amending the RTO–ISO Order to preserve private claims for fraud and manipulation under CEA section 22 would result in frivolous litigation, the Commission requests comment on the following issues regarding such litigation.

a. Please provide details as to the specifics of such litigation, including:

i. What type of entity might sue what other type of entity?

ii. What are the theories under which such litigation might be brought?

iii. How might the causes of action in such litigation derive from the enumerated fraud and manipulation provisions of the CEA that are excepted from the RTO–ISO Order?

b. To the extent there is a concern about an increase in litigation regarding filed rates, how would such litigation survive a motion to dismiss based on the filed rate doctrine? [94]

2. In a letter submitted to the Commission's Energy and Environmental Markets Advisory Committee, PJM, ERCOT, and CAISO argued that "[a]llowing private actions will undermine the legal certainty provided by the exemptions and potentially could divest FERC and the PUCT of jurisdiction over certain ISO and RTO transactions." [95] The letter then set forth a hypothetical scenario involving alleged market manipulation in the RTO–ISO markets, and noted that, "[b]ecause the CFTC's jurisdiction over swaps is 'exclusive,' if a number of federal circuits hold that [financial transmission rights] or other ISO and RTO transactions are swaps or futures contracts, no other federal or state agency could regulate ISOs and RTOs or their transactions." [96] The Commission requests comment on how, given the effect of the savings clause in CEA section 2(a)(1)(I)(i), discussed *supra* in note 51, FERC or PUCT would be divested of jurisdiction in the event of a judicial finding that one or more of the Covered Transactions is a swap. More broadly, the Commission requests comment on how, given that savings clause, preservation of the private right of action would result in regulatory uncertainty and/or inconsistent rulings.

3. To the extent any commenters believe that preserving the private right of action in the RTO–ISO Order will have any other detrimental effect(s) on the RTO–ISO markets or market participants, the Commission requests that such commenters provide a specific and detailed basis for such a conclusion.

Issued in Washington, DC, on May 9, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Notice of Proposed Amendment To and Request for Comment on the Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioner Bowen voted in the affirmative. Commissioner Giancarlo voted in the negative.

Appendix 2—Statement of Chairman Timothy Massad in Support of the Proposed Amendment to the RTO–ISO Order

The proposal we have approved today would amend a 2013 CFTC order that exempted specified transactions of six independent system operators ("ISOs") and regional transmission organizations ("RTOs") from certain provisions of the Commodity Exchange Act (CEA). That order explicitly did not exempt ISOs and RTOs from the general CEA provisions that prohibit fraud and manipulation. If adopted, the proposed amendment would make clear that this exemption does not prohibit private rights of action for violations of the very same anti-fraud and anti-manipulation provisions that are explicitly reserved in the order.

Private rights of action have been instrumental in helping to protect market participants and deter bad actors. These actions can also augment the limited enforcement resources of the CFTC, and serve the public interest by allowing harmed parties to seek damages in instances where the Commission lacks the resources to do so on their behalf.

I appreciate the desire of businesses to have as little regulatory uncertainty as possible. Indeed, providing certainty for market participants is something upon which we're always striving to improve. But we also must make sure there is adequate recourse for those participants.

Moreover, private rights of action were called for by Congress under the CEA, to ensure wronged parties were provided with an appropriate remedy. Congress determined that the benefits to the public good outweigh any potential costs that may be incurred. Our job is to ensure that determination is properly implemented and enforced.

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[94] *See Nantahala Power & Light Co.* v. *Thornburg*, 106 S. Ct. 2349, 2354–57 (1986); *Texas Commercial Energy* v. *TXU Energy, Inc.*, 413 F.3d 503, 508–10 (5th Cir. 2005).

[95] Letter from Paul J. Pantano, Jr. to Christopher Kirkpatrick, Secretary of the Commission, Feb. 24, 2016, at 4, *available at http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/eemac022516_pantano.pdf.*

[96] *Id.* at 5.

While some believe the Commission must have intended to exempt ISOs from private rights of action in the original order because it did not specifically preserve them, the proposal points out that it would be unusual for the Commission to have such an intention and say nothing about it, given that it expressly excluded general anti-fraud and anti-manipulation authority from the exemption. Regardless, we should decide the issue now on the merits. The proposal invites comment from all market participants and members of the public.

Finally, let me say that we are giving this proposal careful thought and consideration. We want to balance the value of regulatory certainty with the need to make sure that there is adequate recourse for market participants. We have heard from market participants in a number of venues, including a February meeting of the Energy and Environmental Markets Advisory Committee, and in other requests for comment. And we have tried to incorporate those concerns into the discussion of this proposal. This Notice of Proposed Amendment poses a number of specific questions that seek further detail with respect to the concerns we have heard from market participants. I encourage all interested parties to carefully consider these questions, and provide the Commission with your feedback.

I thank all those who have already provided us with the benefit of their perspective, as well as the CFTC staff and my fellow Commissioners for their work on this proposal. I look forward to hearing more as the comment period transpires.

Appendix 3—Statement of Dissent by Commissioner J. Christopher Giancarlo

I dissent from the proposed amendment to the final RTO–ISO Order issued by the Commission in 2013.

For over three years, U.S. power market participants have been operating in reliance on the RTO–ISO Order. They have trusted in the reasonable, unambiguous understanding that transactions covered by the Order are exempt from all provisions of the Commodity Exchange Act ("CEA or Act") except for those specifically enumerated as reserved (the "Reserved Provisions"). They have relied on the plain language of the RTO–ISO Order that "[e]xempts . . . the execution of [specified] electric energy-related agreements, contracts and transactions . . . and any person or class of persons offering, entering into, rendering advice or rendering other services with respect thereto, from *all* provisions of the CEA except, in each case, the Commission's general anti-fraud and anti-manipulation authority, and scienter-based prohibitions . . ."[1] Too bad for them.

Today's proposal manages to simultaneously toss legal certainty to the wind and threaten the household budgets of low and middle-income ratepayers by permitting private lawsuits in heavily regulated markets that are at the heart of the U.S. economy.

By this action, the Commission contends that its silence with respect to section 22 of the CEA should be interpreted as evincing its intention all along to retain a private right of action for violations of the Reserved Provisions and that the proposed addition of section 22 to that list is nothing more than a technical clarification.

With all due respect, the Commission's position is disingenuous. It flies in the face of well-accepted legal precedent established by the U.S. Supreme Court,[2] and was soundly rejected recently by the courts in the *Aspire* litigation.[3]

Of course, the Commission is free to change its mind and amend final orders through the notice and comment process, as it proposes to do now. Still, by taking this action the Commission is introducing a disturbing precedent regarding the legal certainty of its orders.[4] In particular, the Commission's proposal to change the scope of the RTO–ISO Order, based not on any change in facts or circumstances but on a legal fiction that it intended to reserve section 22 all along, calls into question the legal certainty of all other section 4(c) orders in which the Commission failed to discuss or reserve the applicability of section 22 for violations of the Act or regulations reserved for itself.[5] Commission orders should not be amended, expanded or withdrawn absent a change in facts or circumstances or the law.

It can be argued that private claims may serve the public interest by empowering injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf. Yet, the extensive regulation and monitoring of RTOs and ISOs significantly obviates the policing role of private suits in these markets. The six entities covered by the RTO–ISO Order are subject to extensive and effective regulation by the RTO–ISO's primary regulator (the Federal Energy Regulatory Commission, "FERC" or the Public Utility Commission of Texas, "PUCT"), and overseen by an independent market monitor responsible to the RTO–ISO's primary regulator. As the FERC has explained, RTOs and ISOs operate not only transmission facilities, but also markets for trading electric energy among utilities, and the "RTO and ISO markets and transmission services are tightly integrated and are regulated to a greater extent than other commodity markets."[6] The FERC has explained that these entities are "critical components in carrying out the FERC's statutory responsibilities,"[7] and the FERC therefore regulates them "more extensively than other public utilities."[8]

I believe that with the protection provided by such extensive regulatory oversight the Commission should not permit private litigation. Doing so would result in too many cooks in the proverbial oversight kitchen. It will lead to conflicting outcomes depriving market participants of the regulatory certainty and coherence Congress intended when it directed the CFTC and the FERC to apply "their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest," to resolve conflicts concerning their overlapping jurisdiction and to avoid, "to the extent possible, conflicting or duplicative regulation."[9] Moreover, exempting the transactions from section 22 would promote the congressionally-directed harmony between the CEA and the Federal Power Act ("FPA"), which expressly disclaims any private right of action for manipulative or deceptive trade practices.[10]

Disallowing private suits under the CEA does not leave persons alleging harm from fraudulent or manipulative practices without recourse. The CFTC may seek restitution on their behalf.[11] In addition, section 306 of the FPA permits the filing of private complaints with the FERC for any violation of the FPA.[12]

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[1] RTO–ISO Order, 78 FR 19880, 19912 (Apr. 2, 2013) (emphasis added) (referring to CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13).

[2] Under well-accepted canons of construction, when a general rule is stated, "[but] there are enumerated exceptions[,] 'additional exceptions are not to be implied . . . .' " *In re Condor Ins. Ltd.*, 601 F3d 319, 324 (5th Cir. 2010) (quoting *Andrus* v. *Glover Constr. Co.*, 446 U.S. 608, 616–17 (1980)). This is a well-settled application of the canon *expressio unius est exclusio alterius*, which provides that when some provisions are listed, but other related provisions are omitted, courts infer "that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003). Moreover, the Supreme Court has explained that ordinarily, silence does not convey any meaning, much less the potential for sweeping liability. *See Cmty. For Creative Non-Violence* v. *Reid*, 490 U.S. 730, 749 (1989) ("Ordinarily, Congress' silence is just that—silence.").

[3] *Aspire Commodities, L.P.* v. *GDF Suez Energy N. Am., Inc.*, No. H–14–1111, 2015 WL 500482 (S.D. Tex. Feb. 3, 2015), aff'd, No. 15–20125, 2016 WL 758689 (5th Cir. Feb. 25, 2016).

[4] The Supreme Court has cautioned that when an administrative agency changes its mind, which the Commission has clearly done here—its claim of clarification notwithstanding—it must be mindful of reliance interests that regulated persons have formed in the interim. *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 514–16 (2009) (citing *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996)).

[5] It is not unusual for the Commission to reserve its anti-fraud or anti-manipulation authority without also reserving section 22; the Commission has done so in the past. *See, e.g.*, A New Regulatory Framework for Clearing Organizations, 65 FR 78020, 78025, 78027 (Dec. 13, 2000) (specifically enumerating section 22 as reserved for reserved provisions of the Act and regulations); A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 FR 77962, 77976, 77986 (Dec. 13, 2000) (specifically enumerating section 22 as reserved for reserved violations of the Act and regulations in connection with transactions executed of Derivatives Transaction Execution Facilities and as not reserved for certain purposes); Effective Date for Swap Regulation, 76 FR 42508, 42517 (Jul. 19, 2011) (discussing exemption from section 22); *see also* RTO–ISO Comment Letter at 6–7, n.11 (Jun. 22, 2015). To remove all doubt, treating the failure to reserve section 22 as intentional is consistent with Commission practice. As the 4(c) orders cited above demonstrate, when the Commission intends to reserve section 22, it has had little trouble either specifically enumerating section 22 as reserved, or including a discussion of its applicability or inapplicability.

[6] FERC Comment Letter on Proposed Order and Request for Comment on Petition of ISOs and RTOs for Exemption of Specified Transactions from Certain Provisions of the CEA, at 2 (Sept. 27, 2012).

[7] *Id.* at 1.

[8] *Id.* at 2.

[9] 15 U.S.C. 8308(a)(1).

[10] 16 U.S.C. 824v (2012).

Aside from the injustice of changing the scope of the RTO–ISO Order three years after it was issued, subjecting the transactions covered by the Order to private suits under the CEA undermines carefully considered policy designed to promote affordable and reliable electricity for millions of American consumers. The defendants' conduct in the *Aspire* litigation was explicitly permitted under Texas law and related PUCT regulations.[13] Indeed, the plaintiffs in *Aspire* brought suit *only after they tried and failed* to convince the PUCT to change its rules permitting the conduct at issue.[14]

In my view, the *Aspire* case is a telling example of the problems with subjecting RTO–ISO transactions to private section 22 litigation. Even if a firm is only involved in the generation or transmission of electric power (and not in the derivatives markets), it may nonetheless be subject to extensive litigation—lasting years, exacting significant sums in defense costs, subjecting ratepayers to potential damages and distracting the firm from its core business—all for merely *complying* with standards crafted and enforced by its primary regulator.[15] Moreover, subjecting electricity providers to private litigation will deprive them of the certainty that the RTO–ISO Order was supposed to provide; if private section 22 claims are allowed, it will be impossible for market participants to be certain which FERC or state rules governing power markets can be adhered to without incurring liability. I fail to see how permitting these kinds of suits would "promote responsible economic or financial innovation and fair competition" that the Commission's exemptive authority is supposed to provide.[16]

Indeed, permitting these suits is in tension with long-standing jurisprudence disallowing private litigants from collaterally attacking a rate, tariff, protocol and/or rule approved or permitted to take effect by the PUCT and/or the FERC. Courts have regularly relied on the so-called "filed rate doctrine," which deprives them of jurisdiction to hear otherwise valid private rights of action where such action seeks to undermine or attack "any 'filed rate'—that is, one approved by the governing regulatory agency—[because such a rate] is per se reasonable and unassailable in judicial proceedings brought by ratepayers."[17]

Here, the Commission dismisses concerns that preserving the section 22 private right of action may cause regulatory uncertainty or inconsistent or duplicative regulation by arguing that the same result could occur if the CFTC were to bring enforcement actions for violations of the Reserved Provisions. This is a concern, to be sure. But the CFTC may bring suit only after an affirmative vote of a majority of Commissioners and in accordance with its Memorandum of Understanding with the FERC under which staff of the CFTC and the FERC have agreed to consult each other on matters of mutual interest and overlapping jurisdiction.[18] The CFTC would therefore be far likelier than a private plaintiff to consider the impact an action for violating the CEA could have on the regulatory policy of co-equal regulators operating in their primary field. Furthermore, unlike private plaintiffs, the CFTC would have a thorough appreciation of a potential defendant's positions in derivatives markets and access to a potential defendant's positions in the cash markets, ensuring that only cases of true merit would be brought. One would expect the CFTC to conduct an extensive investigation and carefully consider any impact an action for CEA violations would have on electricity regulation before bringing suit. I certainly will. As commenters have pointed out, private parties—who may be interested primarily in winning a cash award and/or securing attorneys' fees—will not consider the matter so broadly.

In conclusion, adding section 22 to the list of Reserved Provisions is a serious misstep. At a time of stagnant wage growth, today's proposal may needlessly subject millions of American ratepayers to higher utility bills as a result of the almost certain increase in litigation, court costs and settlement damages. Permitting private rights of action in the heavily regulated RTO–ISO markets is in great tension with the congressional command that the CFTC, the FERC and where applicable, state regulators, work to ensure effective, efficient regulation that provides the RTO–ISO market participants with legal certainty.

As such, I emphatically dissent from the proposal.

[FR Doc. 2016–11385 Filed 5–13–16; 8:45 am]

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[11] 7 U.S.C. 13a-1(d)(3) (2012).

[12] *See* Joint Trade Associations, Comment Letter on Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, at 7 n.17 (Jun. 22, 2015) (citations omitted); *see also* PUCT Comment Letter at 6–7 (Jun. 22, 2015) (explaining that market participants regulated by the Electric Reliability Council of Texas ("ERCOT") aggrieved by the activities of other market participants may bring complaints for adjudication by ERCOT, whose decisions are subject to review by PUCT and the Texas state courts).

[13] *Aspire*, 2015 WL 500482, at *1; *see also* 16 Tex. Admin. Code 25.504(c) (2006). I take no position on the specific PUCT Rule at issue, other to note that it appears to be backed by a broad consensus of Texas electricity stakeholders and vigorously defended by the PUCT. *See Aspire,* 2016 WL 758689, Brief for PUCT as Amicus Curiae, at 27–29.

[14] *Aspire,* 2015 WL 500482, at *1.

[15] *See* PUCT Comment Letter on Proposed Order and Request for Comment on an Application for an Exemptive Order From Southwest Power Pool, Inc. From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, at 7–10 (Jun. 22, 2014) (describing the *Aspire* litigation and its potential deleterious effects on the RTO–ISO markets).

[16] 7 U.S.C. 6(c); *see also* Feb. 25, 2016 Energy and Environmental Markets Advisory Committee Meeting, transcript at 21–70 (discussing the consequences for consumers and rate payers that would flow from permitting private rights of action against RTO–ISO participants).

[17] *Tex. Commercial Energy* v. *TXU Energy,* 413 F.3d 503, 508 (5th Cir. 2005 (quoting *Wegoland, Ltd.* v. *NYNEX Corp.,* 27 F.3d 17, 18 (2d Cir. 1994) (barring otherwise valid antitrust law claim on the basis of the filed-rate doctrine based on PUCT oversight over the relevant electricity market).

[18] Memorandum of Understanding between the FERC and the CFTC (Jan. 2, 2014), *http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/cftcfercjmou2014.pdf.*

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0021]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Application Process for Designation of Rural Area under Federal Consumer Financial Law."

DATES: Written comments are encouraged and must be received on or before June 15, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov (this link active on the day following publication of this notice).* Select "Information Collection Review," under "Currently under Review", use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street, NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Process for Designation of Rural Area under Federal Consumer Financial Law.

OMB Control Number: 3170–0061.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector (banks and credit unions).

Estimated Number of Respondents: 1.

Estimated Total Annual Burden Hours: 5.

Abstract: Section 89002 of the HELP Rural Communities Act (Pub. L. 114–94) requires the Bureau to establish an application process under which a person may apply to have an area designated by the Bureau as a rural area for purposes of a Federal consumer financial law. On March 3, 2016, the Bureau published a Final rule in the **Federal Register** (81 FR 11099) which sets forth the procedure for making this application and requires the applicant to submit information identifying the area for which the request is made, and the justification for granting the area rural status. While the rule specifies what information is to be included, it does not specify to the form or format of the information.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on February 18, 2016 (81 FR 8179). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 10, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–11425 Filed 5–13–16; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2016–0022]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Evaluation of Financial Empowerment Training Program."

DATES: Written comments are encouraged and must be received on or before July 15, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of Financial Empowerment Training Program.

OMB Control Number: 3170–0038.

Type of Review: Extension with change of a currently approved collection.

Affected Public: Individuals, government social services entities, and not-for-profit institutions.

Estimated Number of Respondents: 15,750.

Estimated Total Annual Burden Hours: 10,338.

Abstract: The Bureau's Office of Financial Empowerment (Empowerment) is responsible for developing strategies to improve the financial capability of low-income and economically vulnerable consumers, such as consumers who are unbanked or underbanked, those with thin or no credit file, and households with limited savings. To address the needs of these consumers, Empowerment has developed the Your Money, Your Goals toolkit and training program. These resources equip frontline staff and volunteers in a range of organizations to provide relevant and effective information, tools, and technical assistance designed to improve the financial outcomes and capability of these vulnerable consumers. The Bureau seeks to renew approval of the information collection plan (ICP) to collect qualitative data related to evaluating the effectiveness of this toolkit, collateral materials, and training program. The proposed collections will focus on evaluating: (1) Your Money, Your Goals training practices, toolkit, and collateral materials in enhancing the ability of frontline staff and volunteers to inform and educate low-income consumers about managing their finances; (2) and to assess the scope of workshop participants' use of the resources with the people they serve. The Bureau expects to collect qualitative data through paper-based and web-based surveys.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 10, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–11424 Filed 5–13–16; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights: Winter 2016

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights; notice.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB) is issuing its tenth edition of its Supervisory Highlights. In this issue, the CFPB shares findings from recent examinations in the areas of student loan servicing, remittances, mortgage origination, debt collection, and consumer reporting. This issue also shares important updates to past fair lending settlements reached by the CFPB. As in past editions, this report includes information about recent public enforcement actions that resulted, at least in part, from our supervisory work. Finally, the report recaps recent developments to the CFPB's supervision program, such as the release of updated fair lending examination procedures and guidance documents in the areas of credit reporting, in-person debt collection, and preauthorized electronic fund transfers.

DATES: The Bureau released this edition of the Supervisory Highlights on its Web site on March 8, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher J. Young, Managing Senior Counsel and Chief of Staff, Office of Supervision Policy, 1700 G Street NW., 20552, (202) 435–7408.

SUPPLEMENTARY INFORMATION:

1. Introduction

The Consumer Financial Protection Bureau (CFPB or Bureau) is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. One of the tools the CFPB uses to further this goal is the supervision of bank and nonbank institutions that offer consumer financial products and services. In this tenth edition of Supervisory Highlights, the CFPB shares recent supervisory observations in the areas of consumer reporting, debt collection, mortgage origination, remittances, student loan servicing, and fair lending. One of the Bureau's goals is to provide information that enables industry participants to ensure their operations remain in compliance with Federal consumer financial law. The findings reported here reflect information obtained from supervisory activities completed during the period under review as captured in examination reports or supervisory letters. In some instances, not all corrective actions, including through enforcement, have been completed at the time of this report's publication.

The CFPB's supervisory activities have either led to or supported three recent public enforcement actions, resulting in $52.75 million in consumer remediation and other payments and an additional $8.5 million in civil money penalties. The Bureau also imposed other corrective actions at these institutions, including requiring improved compliance management systems (CMS). In addition to these public enforcement actions, Supervision continues to resolve violations using non-public supervisory actions. When Supervision examinations determine that a supervised entity has violated a statute or regulation, Supervision directs the entity to implement appropriate corrective measures, including remediation of consumer harm when appropriate. Recent supervisory resolutions have resulted in restitution of approximately $14.3 million to more than 228,000 consumers. Other corrective actions have included, for example, furnishing corrected information to consumer reporting agencies, improving training for employees to prevent various law violations, and establishing and maintaining required policies and procedures.

This report highlights supervision work generally completed between September 2015 and December 2015, though some completion dates may vary. Any questions or comments from supervised entities can be directed to *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

Summarized below are some recent examination observations in consumer reporting, debt collection, mortgage origination, remittances, student loan servicing, and fair lending. As the CFPB's Supervision program progresses, we will continue to share positive practices found in the course of examinations (*see* sections 2.2.1, 2.4.4, and 2.5.1), as well as common opportunities for improvement.

One such common area for improvement is the accuracy of information about consumers that is supplied to consumer reporting agencies. As discussed in previous issues, credit reports are vital to a consumer's access to credit; they can be used to determine eligibility for credit, and how much consumers will pay for that credit. Given this, the accuracy of information furnished by financial institutions to consumer reporting agencies is of the utmost importance. As in the last issue of Supervisory Highlights, this issue shares observations regarding the furnishing of consumer information across a number of product areas (*see* sections 2.1.1, 2.1.2, 2.1.4, 2.2.1 and 2.5.5).

2.1 Consumer Reporting

CFPB examiners conducted one or more reviews of compliance with furnisher obligations under the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, at depository institutions. The reviews focused on (i) entities furnishing information (furnishers) to nationwide specialty consumer reporting agencies (NSCRAs) that specialize in reporting in connection with deposit accounts and (ii) NSCRAs themselves.

2.1.1 Furnisher Failure To Have Reasonable Policies and Procedures Regarding Information Furnished to NSCRAs

Regulation V requires companies that furnish information to consumer reporting companies to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information they furnish. Whether policies and procedures are reasonable depends on the nature, size, complexity, and scope of each furnisher's activities. Examiners found that while one or more furnishers had policies and procedures generally pertaining to FCRA furnishing obligations, they failed to have policies and procedures addressing the furnishing of information related to deposit accounts. One or more furnishers also lacked processes or policies to verify data furnished through automated internal systems. For example, one or more furnishers established automated systems to inform NSCRAs when an account was paid-in-full and when the account balance reached zero. But the furnishers did not have controls to check whether such information was actually furnished. To correct this deficiency, Supervision directed one or more furnishers to establish and implement policies and procedures to monitor the automated functions of its deposit furnishing processes.

2.1.2 Furnisher Failure To Promptly Update Outdated Information

The FCRA requires furnishers that regularly and in the ordinary course of business furnish information to consumer reporting agencies to promptly update information they determine is incomplete or inaccurate. Examiners found that one or more such furnishers of deposit account information failed to correct and update the account information they had furnished to NSCRAs and/or did not institute reasonable policies and procedures regarding accuracy, including prompt updating of outdated information. When consumers paid charged-off accounts in full, one or more furnishers would update their systems of records to reflect the payment, but would not update the change in status from "charged-off" to "paid-in-full" and send the update to the NSCRAs. One or more furnishers also required consumers to call the entity to request updated furnishing information when they made final payments on settlement accounts. If a consumer did not call, furnishing on accounts settled-in-full were not updated to the NSCRAs. Not updating an account to paid-in-full or settled-in-full status could adversely affect consumers' attempts to establish new deposit or checking accounts. Supervision directed one or more furnishers to update the furnishing for all impacted accounts.

2.1.3 NSCRAs Ensuring Data Quality

Supervision conducted examinations of one or more NSCRAs to assess their efforts to ensure data quality in their consumer reports. Examiners noted that one or more NSCRAs had internal inconsistencies in linking certain identifying information (*e.g.*, Social Security numbers and last names) to consumer records associated with negative involuntary account closures, such as checking account closures for fraud or account abuse. These inconsistencies in some cases resulted in incorrect information being placed in consumers' files. Based on the weaknesses identified, Supervision directed one or more NSCRAs to develop and implement internal processes to monitor, detect, and prevent the association of account closures to incorrect consumer profiles, and to notify affected consumers.

2.1.4 NSCRA Oversight of Furnishers

Examiners reviewed one or more NSCRAs, focusing on their various systems and processes used to oversee and approve furnishers. They found that one or more NSCRAs had weaknesses in their systems and processes for credentialing of furnishers before the furnishers were allowed to supply consumer information to an NSCRA. Specifically, examiners found that one or more NSCRAs did not always follow their own policies and procedures for issuing credentials to furnishers and did not implement a timeframe for furnishers to submit NSCRA-required documentation during the credentialing process. In addition, one or more NSCRAs failed to maintain documentation adequate under their policies and procedures to demonstrate the steps that were taken to approve a furnisher after the initial credentialing process. Supervision directed one or more NSCRAs to strengthen their oversight and establish documented policies and procedures for the timely tracking of credentialing and re-credentialing of furnishers.

2.2 Debt Collection

The Supervision program covers certain bank and nonbank creditors who originate and collect their own debt, as well as the larger nonbank third-party debt collectors. During recent examinations, examiners observed a beneficial practice that involved using exception reports provided by consumer reporting agencies (CRAs) to improve the accuracy and integrity of information furnished to CRAs. However, examiners also identified several violations of the Fair Debt Collection Practices Act (FDCPA), including failing to honor consumers' requests to cease communication, and using false, deceptive or misleading representations or means regarding garnishment.

2.2.1 Use of Exception Reports by Furnishers To Reduce Errors in Furnished Information

Banks and nonbanks that engage in collections activity and that furnish information about consumers' debts to CRAs must comply with the FCRA and Regulation V. As noted above, furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information that they furnish to a CRA. CRAs routinely provide or make available exception reports to furnishers. These exception reports identify for furnishers the specific information a CRA has rejected from the furnisher's data submission to the CRA, and thus has not been included in a consumer's credit file. The reports also provide information that a furnisher can use to understand why the furnished information was rejected. In some circumstances, these rejections may help identify mechanical problems in transmitting data or potential inaccuracies of the information the furnisher attempted to furnish.

In responding to a matter requiring attention requiring one or more entities engaging in collections activities to enhance policies and procedures to ensure proper and timely identification of information rejected by the CRAs, one or more entities enhanced its policies and procedures regarding the utilization of exception reports to resolve rejected information. Examiners found that the one or more entities reviewed and corrected rejections related to errors in consumer names, updated name and address information through customer outreach, and met regularly with the CRAs to discuss the exception reports and to identify patterns in rejections. As a result of these efforts, one or more entities had a significant reduction in errors and exceptions, which led to greater accuracy in the information furnished to CRAs.

2.2.2 Cease-Communication Requests

Under section 805(c) of the FDCPA, when consumers notify a debt collector in writing that they refuse to pay a debt or that they wish the debt collector to cease further communication with them, the debt collector must, with certain exceptions, cease communication with the consumer with respect to the debt. Examiners determined that one or more debt collectors failed to honor some consumers' written requests to cease communication. The failures resulted from system data migration errors and from mistakes during manual data entry. In some instances, the debt collectors had not properly coded the accounts to prevent further calls. In other instances, debt collectors changed the accounts back to "active" status, allowing further communications to be made. Supervision directed one or more debt collectors to improve training for their employees on how to identify and properly handle cease-communication requests.

2.2.3 False, Deceptive or Misleading Representations Regarding Garnishment

Under section 807 of the FDCPA, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Examiners determined that one or more debt collectors used false, deceptive, or misleading representations or means regarding administrative wage garnishment when performing collection services of defaulted student loans for the Department of Education. The debt collectors threatened garnishment against certain borrowers who were not eligible for garnishment under the Department of Education's guidelines. The debt collectors also gave borrowers inaccurate information about when garnishment would begin, creating a false sense of urgency. Supervision directed one or more debt collectors to conduct a root-cause analysis of what led their employees to make these statements and to improve training to prevent such statements in the future.

2.3 Mortgage Origination

During the period covered by this report, the Title XIV rules were the focus of mortgage origination examinations. In addition, these examinations evaluated compliance for other applicable Federal consumer financial laws as well as evaluating entities' compliance management systems. Findings from examinations within this period demonstrate, with some exceptions, general compliance with the Title XIV rules. Exceptions include, for example, the absence of written policies and procedures at depository institutions required under the loan originator rule. Examiners also found certain deficiencies in compliance management systems, as discussed below.

2.3.1 Failure To Maintain Written Policies and Procedures Required by the Loan Originator Rule

The loan originator rule under Regulation Z requires depository institutions to establish and maintain written policies and procedures for loan originator activities, which specifically cover prohibited payments, steering, qualification requirements, and identification requirements. In one or more examinations, depository institutions violated this provision by failing to maintain such written policies and procedures. In most of these cases, examiners found violations of one or more related substantive provisions of the rule. For example, one or more institutions did not provide written policies and procedures—a violation itself—and violated the rule by failing to comply with the requirement to include the loan originator's name and Nationwide Multistate Licensing System and Registry identification on loan documents. In these instances, examiners determined that the failure to have written policies and procedures covering identification requirements was a violation of the rule and Supervision directed one or more institutions to establish and maintain the required written policies and procedures.

2.3.2 Deficiencies in Compliance Management Systems

At one or more institutions, examiners concluded that a weak compliance management system allowed violations of Regulations X and Z to occur. For example, one or more supervised entities failed to allocate sufficient resources to ensure compliance with Federal consumer financial law. As a result, these entities were unable to institute timely corrective-action measures, failed to maintain adequate systems, and had insufficient preventive controls to ensure compliance and the correct implementation of established policies and procedures. Supervision notified the entities' management of these findings, and corrective action was taken to improve the entities' compliance management systems.

2.4 Remittances

The CFPB's amendments to Regulation E governing international money transfers (or remittances) became effective on October 28, 2013. Regulation E, Subpart B (or the Remittance Rule) provides new protections, including disclosure requirements, and error resolution and cancellation rights to consumers who send remittance transfers to other consumers or businesses in a foreign country. The amendments implement statutory requirements set forth in the Dodd-Frank Act.

The CFPB began examining large banks for compliance with the Remittance Rule after the effective date, and, in December 2014, the Bureau gained supervisory authority over certain nonbank remittance transfer providers pursuant to one of its larger participant rules. The CFPB's examination program for both bank and nonbank remittance providers assesses the adequacy of each entity's CMS for remittance transfers. These reviews also check for providers' compliance with the Remittance Rule and other applicable Federal consumer financial laws. Below are some recent findings from Supervision's remittance transfer examination program.

In all cases where examiners found violations of the Remittance Rule, Supervision directed entities to make appropriate changes to compliance management systems to prevent future violations and, where appropriate, to remediate consumers for harm they experienced.

2.4.1 Compliance Management Systems

Overall, remittance transfer providers examined by Supervision have implemented changes to their CMS to address compliance with the Remittance Rule. But for some providers, CMS is in the early stages of development and weaknesses were noted. At both bank and nonbank remittance transfer providers, boards of directors and management have dedicated some resources to comply with the Remittance Rule, and have updated policies and procedures, complaint management and training programs to cover this area. But some providers did not implement these changes until sometime after the effective date of the Remittance Rule. Moreover, examiners found implementation gaps or systems issues, some of which were not addressed by pre-implementation testing and post-implementation monitoring and audit. For example, examiners found that failure by one or more remittance transfer providers to conduct adequate testing of their systems led to consumers receiving inaccurate disclosures or, in some instances, no disclosures at all. At some nonbank remittance transfer providers, Supervision found weaknesses in the oversight of agents/service providers, consumer complaint response, and compliance audit.

2.4.2 Violations of the Remittance Rule

The Remittance Rule requires that providers of remittance transfers give their customers certain disclosures before (*i.e.*, a prepayment disclosure) and after (*i.e.*, a receipt) the customer pays for the remittance transfer. The prepayment disclosure must include, among other things, the amount to be transferred; front-end fees and taxes; the applicable exchange rate; covered third-party fees (if applicable); the total amount to be received by the designated recipient; and a disclaimer that the total amount received by the designated recipient may be less than disclosed due to recipient bank fees and foreign taxes. The receipt includes all the information on the prepayment disclosure and additional information, including the date the funds will be available, disclosures on cancellation, refund and error resolution rights, and whom to contact with issues related to the transfer. In lieu of separate disclosures, a provider can provide a combined disclosure when it would otherwise provide a prepayment disclosure and a proof of payment when it would otherwise provide a receipt.

Examiners noted the following violations at one or more providers:

- Providing incomplete, and in some instances, inaccurate disclosures
- Failing to adhere to the regulatory timeframes (typically three business days) for refunding cancelled transactions
- Failing to communicate the results of error investigations at all or within the required timeframes, or communicating the results to an unauthorized party instead of the sender; and
- Failing to promptly credit consumers' accounts (for amounts transferred and fees) when errors occurred.

The Remittance Rule requires that certain disclosures be given to consumers orally in transactions conducted orally and entirely by telephone. Examiners have also cited various violations of the rule related to oral disclosures. The Remittance Rule further requires disclosures in each of the foreign languages that providers principally use to advertise, solicit, or market remittance transfer services, or in the language primarily used by the sender to conduct the transaction, provided that the sender uses the language that is principally used by the remittance transfer provider to advertise, solicit, or market remittance transfer services. Compliance with the Remittance Rule's foreign language requirements has generally been adequate, though Supervision has cited one or more providers for failing to give oral disclosures and/or written results of investigations in the appropriate language.

2.4.3 Deceptive Representations

One or more remittance providers made deceptive statements leaving consumers with a false impression regarding the conditions placed on designated recipients in order to access transmitted funds. Supervision directed one or more entities to review their marketing materials and make the necessary changes to cease these deceptive representations.

2.4.4 Zero-Money-Received Transactions

At one or more remittance transfer providers, examiners observed transactions in which the provider disclosed to consumers that the recipients would receive zero dollars after fees were deducted. In some cases, consumers completed these transactions after receiving disclosures indicating that no funds would be received. When examiners informed providers of these transactions, multiple providers took voluntary proactive steps to alter their systems to either provide consumers with an added warning to ensure they understood the possible result of the transaction, or simply prevent these transactions from being completed. While not a violation of the Remittance Rule, the CFPB is continuing to gather information about transactions with this possible outcome.

2.5 *Student Loan Servicing*

In September of last year, the Bureau released joint principles of student loan servicing together with the Departments of Education and Treasury as a framework to improve student loan servicing practices, promote borrower success and minimize defaults. We are committed to ensuring that student loan servicing is consistent, accurate and actionable, accountable, and transparent. The Bureau has made it a priority to take action against companies that are engaging in illegal servicing practices. To that end, supervising the student loan servicing market has therefore been a priority for the Supervision program. Our ongoing supervisory program has already touched a significant portion of the student loan servicing market, and industry members who service student loans would be well served by carefully reviewing the findings described below.

The CFPB continues to examine entities servicing both Federal and private student loans, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Act. As in all applicable markets, Supervision also reviews student loan servicers' practices related to furnishing of consumer information to CRAs for compliance with the FCRA and its implementing regulation, Regulation V. In the Bureau's student loan servicing examinations, examiners have identified a number of positive practices, as well as several unfair acts or practices, and Regulation V violations.

2.5.1 Improved Student Loan Payment Allocation and Loan Modification Practices at Some Servicers

As described in previous editions of Supervisory Highlights, examiners have found UDAAPs relating to payment allocation among multiple student loans in a borrower's account. However, examiners have also found that one or more servicers have adopted payment allocation policies for overpayments designed to be more beneficial to consumers by minimizing interest expense. For example, one or more servicers allocated payments exceeding the total monthly payment on the account by allocating the excess funds to the loan with the highest interest rate. These servicers also clearly explained the allocation methodology to consumers, communicated that consumers can provide instructions on allocating overpayments, and provided mechanisms for providing these instructions, so that borrowers could choose to allocate excess funds in a different manner if they'd like.

Several reports of the CFPB Student Loan Ombudsman have noted that some private student loan borrowers have complained that they were not being offered repayment plans or loan modifications to assist them when they were struggling to make payments. In light of that, Supervision notes that it has observed reasonable borrower workout plans at some private student loan servicers, suggesting that providing this kind of assistance is feasible.

2.5.2 Auto-Default

Some private student loan promissory notes contain "whole loan due" clauses. In general, these clauses provide that if certain events occur, such as a consumer's bankruptcy or death, the loan will be accelerated and become immediately due. If the consumer does not satisfy the accelerated loan, the servicer will place the loan in default. This practice is sometimes referred to as an "auto-default."

Examiners determined that one or more servicers engaged in an unfair practice in violation of the Dodd-Frank Act relating to auto-default. When a private student loan had a borrower and a cosigner, one or more servicers would auto-default both borrower and cosigner if either filed for bankruptcy. These auto-defaults were unfair where the whole loan due clause was ambiguous on this point because reasonable consumers would not likely interpret the promissory notes to allow their own default based on a co-debtor's bankruptcy. Further, one or more servicers did not notify either co-debtor that the loan was placed in default. Some consumers only learned that a servicer placed the loan in a default status when they identified adverse information on their consumer reports, the servicer stopped accepting loan payments, or they were contacted by a debt collector.

Supervision directed one or more servicers to immediately cease this practice. Additionally, since the CFPB's April 2014 report first highlighted auto-defaults as a concern, some companies have voluntarily ceased the practice.

2.5.3 Failure To Disclose Impact of Forbearance on Cosigner Release Eligibility

In one or more examinations, examiners determined that servicers committed unfair practices by failing to disclose a significant adverse consequence of forbearance. For some private student loans, a borrower's use of forbearance can delay, or permanently foreclose, the cosigner release option agreed to in the contract. Examiners found that one or more servicers committed an unfair practice by not disclosing this potential consequence when borrowers applied for forbearance. Consumers are at risk of substantial injury when, as a result of forbearance, the ability to release a cosigner is delayed or foreclosed. As a result of these findings, examiners directed one or more servicers to improve the content of its communications regarding the impact that forbearance use has on the availability of cosigner release.

2.5.4 Servicing Conversion Errors Costing Borrowers Money

Multiple loan owners have their loans serviced by student loan servicers. When ownership of student loans changes but the servicer continues to service the account, a servicer may need to "convert" the account to reflect the new loan owner. Similar conversions might be necessary when other major changes are made to the account (like the identity of the primary borrower). At one or more servicers, examiners found unfair practices connected to these conversions. Examiners found that, during a loan conversion process, one or more servicers used inaccurate interest rates that exceeded the rate for which the consumer was liable under the promissory note instead of using the correct interest rate information to update the relevant loan records. Examiners found this to be an unfair practice, and Supervision directed one or more servicers that committed this unfair practice to implement a plan to reimburse all affected consumers.

2.5.5 Furnishing and Regulation V

Compliance with the FCRA and Regulation V remains a top priority in the CFPB's student loan servicing examinations. Regulation V requires companies that furnish information on consumers to CRAs to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information they furnish. Whether policies and procedures are reasonable depends on the nature, size, complexity, and scope of the entity's furnishing activities. Servicers and other furnishers must consider the guidelines in Appendix E to 12 CFR 1022 in developing their policies and procedures and incorporate those guidelines that are appropriate.

Many student loan servicers have extensive furnishing operations, sending information on millions of consumers to CRAs every month. During one or more student loan servicing examinations, examiners found one or more servicers that did not have any written policies and procedures regarding the accuracy and integrity of information furnished to the CRAs. Examiners also found policies and procedures that were insufficient to meet the obligations imposed by Regulation V. For example, examiners found:

- Policies and procedures that do not reference one another so that it is difficult to determine which policy or procedure applies;
- Policies and procedures that do not contemplate record retention, internal controls, audits, testing, third party vendor oversight, or the technology used to furnish information to CRAs; and
- Policies and procedures that lack sufficient detail on employee training.

In light of the extensive nature, size, complexity, and scope of the furnishing activities, examiners found that these policies and procedures were not reasonable according to Regulation V. Supervision directed one or more servicers to enhance their policies and procedures regarding the accuracy and integrity of information furnished to CRAs, including by addressing the conduct described in the bullets listed above.

2.6 Fair Lending

2.6.1 Updates: Fair Lending Enforcement Settlement Administration

Ally Financial Inc. and Ally Bank

On December 19, 2013, working in close coordination with the DOJ, the CFPB ordered Ally Financial Inc. and Ally Bank (Ally) to pay $80 million in damages to harmed African-American, Hispanic, and Asian and/or Pacific Islander borrowers. This public enforcement action represented the Federal Government's largest auto loan discrimination settlement in history.

On January 29, 2016, harmed borrowers participating in the settlement were mailed checks by the Ally settlement administrator, totaling $80 million, plus interest. The Bureau found that Ally had a policy of allowing dealers to increase or "mark up" consumers' risk-based interest rates, and paying dealers from those markups, and that the policy lacked adequate controls or monitoring. As a result, the Bureau found that between April 2011 and December 2013, this markup policy resulted in African-American, Hispanic, Asian and Pacific Islander borrowers paying more for auto loans than similarly situated non-Hispanic white borrowers.

In the summer and fall of 2015, the Ally settlement administrator contacted potentially eligible borrowers to confirm their eligibility and participation in the settlement. To be eligible for a payment, a borrower must have:

- Obtained an auto loan from Ally between April 2011 and December 2013;
- Had at least one borrower on the loan who was African-American, Hispanic, Asian or Pacific Islander; and
- Been overcharged.

Through that process, the settlement administrator identified approximately 301,000 eligible, participating borrowers and co-borrowers who were overcharged as a result of Ally's discriminatory markup policy during the relevant time period, representing approximately 235,000 loans.

In addition to the $80 million in settlement payments for consumers who were overcharged between April 2011 and December 2013, and pursuant to its continuing obligations under the terms of the orders, Ally recently paid approximately $38.9 million to consumers that Ally determined were both eligible and overcharged on auto loans issued during 2014.

Additional information regarding this public enforcement action can be found in the Summer 2014 edition of Supervisory Highlights.

Synchrony Bank, formerly known as GE Capital Retail Bank

On June 19, 2014, the CFPB, as part of a joint enforcement action with the DOJ, ordered Synchrony Bank, formerly known as GE Capital, to provide $169 million in relief to about 108,000 borrowers excluded from debt relief offers because of their national origin, in violation of ECOA. This public enforcement action represented the Federal Government's largest credit card discrimination settlement in history.

In the course of administering the settlement, Synchrony Bank identified additional consumers who have a mailing address in Puerto Rico or who indicated a preference to communicate in Spanish and were excluded from these offers. Synchrony Bank provided a total of approximately $201 million in redress including payments, credits, interest, and debt forgiveness to approximately 133,463 eligible consumers. This amount includes approximately $4 million of additional redress based on the bank's identification of additional eligible consumers. Redress to consumers in the Synchrony matter was completed as of August 8, 2015. Additional information regarding this enforcement action can be found in the Fall 2014 edition of Supervisory Highlights.

3. Remedial Actions

3.1 Public Enforcement Actions

The Bureau's supervisory activities resulted in or supported the following public enforcement actions.

3.1.1 EZCORP, Inc.

On December 16, 2015, the CFPB announced a consent order with EZCORP, Inc., a short-term, small-dollar lender, for illegal debt collection practices, some of which were initially discovered during the course of a Bureau examination. These practices related to in-person collection visits at consumers' homes or workplaces, risking disclosing the existence of consumers' debt to unauthorized third parties, falsely threatening consumers with litigation for non-payment of debts, misrepresenting consumers' rights, and unfairly making multiple electronic withdrawal attempts from consumer accounts which caused mounting bank fees. EZCORP violated the Electronic Fund Transfer Act and the Dodd-Frank Act's prohibition against unfair or deceptive acts or practices.

EZCORP will refund $7.5 million to 93,000 consumers, pay a $3 million civil money penalty, and stop collection of remaining payday and installment loan debts owed by roughly 130,000 consumers. The consent order also bars EZCORP from future in-person debt collection. In addition, the CFPB issued an industry-wide warning about potentially unlawful conduct during in-person collections at homes or workplaces.

3.1.2 Fifth Third Bank

On September 28, 2015, the CFPB resolved an action with Fifth Third Bank (Fifth Third) that requires Fifth Third to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination. On that same date, the DOJ filed a complaint and proposed consent order in the U.S. District Court for the Southern District of Ohio addressing the same conduct. That consent order was entered by the court on October 1, 2015. The CFPB found and the DOJ alleged that Fifth Third's past practices resulted in thousands of African-American and Hispanic borrowers paying higher interest rates than similarly-situated non-Hispanic white borrowers for their auto loans. The consent orders require Fifth Third to pay $18 million in restitution to affected borrowers.

As of the second quarter of 2015, Fifth Third was the ninth largest depository auto loan lender in the United States and the seventeenth largest auto loan lender overall. As an indirect auto lender, Fifth Third sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Fifth Third then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. This is typically called "discretionary markup." Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Fifth Third's policy permitted dealers to mark up consumers' interest rates as much as 2.5% during the period under review.

From January 2013 through May 2013, the Bureau conducted an examination that reviewed Fifth Third's indirect auto lending business for compliance with ECOA and Regulation B. On March 6, 2015, the Bureau referred the matter to the DOJ. The CFPB found and the DOJ alleged that Fifth Third's indirect lending policies resulted in minority borrowers paying higher discretionary markups, and that Fifth Third violated ECOA by charging African-American and Hispanic borrowers higher discretionary markups for their auto loans than non-Hispanic white borrowers without regard to the creditworthiness of the borrowers. The CFPB found and the DOJ alleged that Fifth Third's discriminatory pricing and compensation structure resulted in thousands of minority borrowers from January 2010 through September 2015 paying, on average, over $200 more for their auto loans.

The CFPB's administrative consent order and the DOJ's consent order require Fifth Third to reduce dealer discretion to mark up the interest rate to a maximum of 1.25% for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or move to non-discretionary dealer compensation. Fifth Third is also required to pay $18 million to affected African-American and Hispanic borrowers whose auto loans were financed by Fifth Third between January 2010 and September 2015. The Bureau did not assess penalties against Fifth Third because of the bank's responsible conduct, namely the proactive steps the bank is taking that directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Fifth Third Bank must hire a settlement administrator who will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation. The CFPB will release a consumer advisory with contact information for the settlement administrator once a settlement administrator is named.

3.1.3 M&T Bank, as Successor to Hudson City Savings Bank

On September 24, 2015, the CFPB and the DOJ filed a joint complaint against Hudson City Savings Bank (Hudson City) alleging discriminatory redlining practices in mortgage lending and a proposed consent order to resolve the complaint. The complaint alleges that from at least 2009 to 2013, Hudson City illegally redlined in violation of the Equal Credit Opportunity Act (ECOA) by providing unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania. The DOJ also alleged that Hudson City violated the Fair Housing Act, which also prohibits discrimination in residential mortgage lending. Specifically, the complaint alleges that Hudson City structured its business to avoid and thereby discourage prospective borrowers in majority-Black-and-Hispanic neighborhoods from accessing mortgages. The consent order requires Hudson City to pay $25 million in direct loan subsidies to qualified borrowers in the affected communities, $2.25 million in community programs and outreach, and a $5.5 million penalty. This represents the largest redlining settlement in history as measured by such direct subsidies. On November 1, 2015, Hudson City was acquired by M&T Bank Corporation, and Hudson City was merged into Manufacturers Banking and Trust Company (M&T Bank), with M&T Bank as the surviving institution. As the successor to Hudson City, M&T Bank is responsible for carrying out the terms of the Consent Order.

Hudson City was a federally-chartered savings association with 135 branches and assets of $35.4 billion and focused its lending on the origination and purchase of mortgage loans secured by single-family properties. According to the complaint, Hudson City illegally avoided and thereby discouraged consumers in majority-Black-and-

Hispanic neighborhoods from applying for credit by:

- Placing branches and loan officers principally outside of majority-Black-and-Hispanic communities;
- Selecting mortgage brokers that were mostly located outside of, and did not effectively serve, majority-Black-and-Hispanic communities;
- Focusing its limited marketing in neighborhoods with relatively few Black and Hispanic residents; and
- Excluding majority-Black-and-Hispanic neighborhoods from its credit assessment areas.

The consent order which was entered by the court on November 4, 2015, requires Hudson City to pay $25 million to a loan subsidy program that will offer residents in majority-Black-and-Hispanic neighborhoods in New Jersey, New York, Connecticut, and Pennsylvania mortgage loans on a more affordable basis than otherwise available from Hudson City; spend $1 million on targeted advertising and outreach to generate applications for mortgage loans from qualified residents in the affected majority-Black-and-Hispanic neighborhoods; spend $750,000 on local partnerships with community-based or governmental organizations that provide assistance to residents in majority-Black-and-Hispanic neighborhoods; and spend $500,000 on consumer education, including credit counseling and financial literacy. In addition to the monetary requirements, the decree orders Hudson City to open two full-service branches in majority-Black-and-Hispanic neighborhoods, expand its assessment areas to include majority-Black-and-Hispanic communities, assess the credit needs of majority-Black-and-Hispanic communities, and develop a fair lending compliance and training program.

3.2 Non-Public Supervisory Actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately $14.3 million in restitution to more than 228,000 consumers. These non-public supervisory actions generally have been the product of CFPB ongoing supervision and/or targeted examinations, often involving either examiner findings or self-reported violations of Federal consumer financial law. Recent non-public resolutions were reached in the areas of deposits, debt collection, and mortgage origination.

4. Supervision Program Developments

4.1 Examination Procedures

4.1.1 Updated ECOA Baseline Review Modules

On October 30, 2015, the CFPB published an update to the ECOA baseline review modules, which are part of the CFPB Supervision and Examination Manual. Examination teams use the ECOA baseline review modules to evaluate how institutions' compliance management systems identify and manage fair lending risks under ECOA. The procedures have been reorganized into five modules: Fair Lending supervisory history; Fair Lending compliance management system; and modules on Fair Lending risks related to origination, servicing, and underwriting models. Examination teams will use the second module, "Fair Lending compliance management system," to evaluate compliance management as part of in-depth ECOA targeted reviews. The fifth module, "Fair Lending risks related to models," is a new addition that examiners will use to review models that supervised financial institutions may use. The ECOA baseline review modules are consistent with and cross-reference the FFIEC interagency Fair Lending examination procedures. They can be utilized to evaluate fair lending risk at any supervised institution and in any product line.

When using the modules to conduct an ECOA baseline review, CFPB examination teams review an institution's fair lending supervisory history, including any history of fair lending risks or violations previously identified by the CFPB or any other Federal or state regulator. Examination teams collect and evaluate information about an entity's fair lending compliance program, including board of director and management participation, policies and procedures, training materials, internal controls and monitoring and corrective action. In addition to responses obtained pursuant to information requests, examination teams may also review other sources of information, including any publicly available information about the entity as well as information obtained through interviews with institution staff or supervisory meetings with an institution.

4.2 Recent CFPB Guidance

The CFPB is committed to providing guidance on its supervisory priorities to industry and members of the public.

4.2.1 Bulletin on Furnisher Fair Credit Reporting Act (FCRA) Obligation To Have Reasonable Written Policies and Procedures

On February 3, 2016, the CFPB issued a bulletin[1] to emphasize the obligation of furnishers under the FCRA and its implementing Regulation V to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to CRAs. The supervisory experience of the Bureau suggests that some financial institutions are not compliant with their obligations under Regulation V with regard to furnishing to specialty CRAs. This obligation, which has been required under Regulation V since July 2010, applies to furnishing to all CRAs, including furnishing to specialty CRAs, such as the furnishing of deposit account information to CRAs. The bulletin emphasizes that furnishers must have policies and procedures that meet this requirement with respect to all CRAs to which they furnish.

4.2.2 Bulletin on In-Person Collection of Consumer Debt

Bulletin 2015–07, released on December 16, 2015, notes that both first-party and third-party debt collectors may run a heightened risk of committing unfair acts or practices in violation of the Dodd-Frank Act when they conduct in-person debt collection visits, including to a consumer's workplace or home. An act or practice is unfair under the Dodd-Frank Act when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition. With respect to substantial injury, the bulletin explains that depending on the facts and circumstances, these visits may cause or be likely to cause substantial injury to consumers. For example, in-person collection visits may result in third parties such as consumers' co-workers, supervisors, roommates, landlords, or neighbors learning that the consumers have debts in collection, which could harm the consumer's reputation and, with respect to in-person collection at a consumer's workplace, result in negative employment consequences.

In addition, depending on the facts and circumstances, in-person collection visits may result in substantial injury to consumers even when there is no risk that the existence of the debt in collections will be disclosed to third parties. For example, a consumer who is not allowed to have visitors at work may suffer adverse employment consequences as a result of these visits, regardless of whether there is a risk of disclosure to third parties. Further, if the likely or actual consequence of the visits is to harass the consumer, an in-person collection visit may also be likely to cause substantial injury to the consumer.

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[1] Published in the **Federal Register** on February 4, 2016 (81 FR 5992).

Finally, the bulletin also notes that third-party debt collectors and others subject to the FDCPA engaging in in-person collection visits risk violating certain provisions of the FDCPA, such as section 805(b) of the FDCPA's prohibition on communicating with third parties in connection with the collection of any debt (subject to certain exceptions).

4.2.3 Bulletin on Requirements for Consumer Authorizations for Preauthorized Electronic Fund Transfers

On November 23, 2015, the CFPB released bulletin 2015–06, which reminds entities of their obligations under the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, when obtaining consumer authorizations for preauthorized electronic fund transfers (EFTs) from a consumer's account. The bulletin explains that oral recordings obtained over the phone may authorize preauthorized EFTs under Regulation E provided that these recordings also comply with the E-Sign Act. Further, the bulletin outlines entities' obligations to provide a copy of the terms of preauthorized EFT authorizations to consumers, summarizes the current law, highlights relevant supervisory findings, and articulates the CFPB's expectations for entities obtaining consumer authorizations for preauthorized EFTs to help them ensure their compliance with Federal consumer financial law.

5. Conclusion

The CFPB recognizes the value of communicating program findings to CFPB-supervised entities to aid them in their efforts to comply with Federal consumer financial law, and to other stakeholders to foster better understanding of the CFPB's work.

To this end, the Bureau remains committed to publishing its Supervisory Highlights report periodically in order to share information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), to communicate operational changes to the program, and to provide a convenient and easily accessible resource for information on the CFPB's guidance documents.

6. Regulatory Requirements

This Supervisory Highlights summarizes existing requirements under the law, summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority, and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Supervisory Highlights does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: May 10, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–11423 Filed 5–13–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Request for Information on Robotic and Autonomous Systems-of-Systems (RAS) Technology Initiatives

AGENCY: Department of the Army, DoD.

ACTION: Request for information regarding support to Army RAS Competencies.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.140 through 160) the Department of the Army requests industry information on products, science and technology (S&T) research, operational concepts, and mission support innovations to support Army RAS competencies. No funds are available for any proposal or information submission and submitting information does not bind the Army for any future contracts/grants resulting from this request for information.

The Army Science Board is requesting information from organizations external to the Army that will help the board complete its analysis and ensure that all viable sources of information are explored. Based on information submitted in response to this request, the Army Science Board may invite selected organizations to provide additional information on technologies of interest.

To supplement the information developed in previous studies and otherwise available to the Board, organizations are invited to submit information on products or technologies to support RAS competencies and can be developed externally, either with support from the Army or from other sources.

Specific information requested from industry on RAS products or technology (including Unmanned Air Systems (UAS) or Unmanned Ground Vehicles (UGV)) that companies are offering, or plan to offer, to government, civil or commercial customers is: Identification of the product and its capabilities; Description of the product or technology, including on-board processing architecture and functionality (*e.g.*, vehicle guidance, navigation and control, sensor processing); Description of the current autonomous functionality and capabilities (*e.g.*, waypoint navigation, sensor management, perception/reasoning); Description of plans to increase autonomy and changes, if any, to on-board processing architecture/functionality enabling greater autonomy; Description of the Human-RAS collaboration capabilities, or planned capabilities, and changes, if any, to on-board processing architecture/functionality enabling greater human-RAS collaboration; Assessment of utility of current, or planned, products or technologies to Army applications and missions.

ADDRESSES: Written submissions are to be submitted to the: Army Science Board, ATTN: Designated Federal Officer, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: LTC Stephen K Barker at *stephen.k.barker.mil@mail.mil.*

SUPPLEMENTARY INFORMATION:

Background. The Terms of Reference (ToR) provided by the Office of the Secretary of the Army directs the Army Science Board (ASB) to undertake a 2016 Study on "Robotic and Autonomous Systems-of-Systems Architecture."

In accordance with the ToR, this study will analyze and identify the Army formations with the greatest potential to benefit from adoption of RAS technology in both the near term (7–10 years) and the long term (10–25 years). For each selected application, the study team should define the benefits of RAS, considering such factors as cost, manpower reduction, survivability, and mission effectiveness. To the extent possible, the team should make maximum use of existing platforms available in the Army, other Services, or commercially. Among the concepts being studied by the study team, for which it is seeking input are on relevant products and technologies are: Counter Integrated Air Defense (IAD) System; Counter Armor and Counter Fires System; Combat Aviation Wingman; Manned-Unmanned Armor Platoon; Multi-Mission Aerial layer System; Soldier Situational Awareness (SA) System; and Point of Need Sustainment. This is not an exhaustive list. Other concepts are of interest as well.

Submission Instructions and Format: To respond to this request for information, interested parties should submit all information detailed below. Packages must be submitted by Friday, May 27, 2016 by 4 p.m. Eastern Standard Time. Submissions should briefly summarize the technologies within a maximum of four pages (as broken down in paragraphs b, c, and d below), excluding quad chart, figures, references and the cover page. No proprietary information should be included in the responses. Submissions require both a CD and a hard copy of the response. The size of the CD submission will be limited to 20 MB. The hard copy format specifications include 12 point font, single-spaced, single-sided, 8.5 by 11 inches paper, with a 1 inch margin.

a. Cover Page (1 page only):

Title

Industry

Respondent's technical and administrative points of contact (names, addresses, phone and fax numbers, and email addresses).

b. Abstract (1 page only): Summarize product or technology solutions and how they support Army RAS competencies. Respondents are encouraged to be as succinct as possible while providing sufficient detail to adequately convey the product or technology solutions.

c. Product or Technology Description (4 pages maximum): Provide an enhanced view of the product or technology solution you are proposing, focusing on the advantages of the product or technology and its applicability to future Army RAS competencies. The description of each solution should include the current state of development and the predicted performance levels the product or technology should reasonably achieve. Of most interest to this study is a description of the current autonomous functionality of the product, the types of human-RAS collaboration that are supported by the product, any plans to increase autonomy and collaboration, and changes required to the on-board processing architecture needed to enable these planned improvements.

d. Applicability to Future Army RAS competency (1 page only): Identify and expound upon how the product or technology supports the seven Study Concept areas mentioned above, concentrating on the added capability this solution provides that currently does not exist.

All Proposers should review the NATIONAL INDUSTRIAL SECURITY PROGRAM OPERATING MANUAL, (NISPOM), dated February 28, 2006, as it provides the baseline standards for the protection of classified information and prescribes the requirements concerning Contractor Development information under paragraph 4–105. Defense Security Service (DSS) Site for the NISPOM is: *http://www.dss.mil/isp/fac_clear/download_nispom.html.*

Unclassified white papers/CDs must be mailed to the POC listed (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). Proposers who intend to include classified information or data in their white paper submission or who are unsure about the appropriate classification of their white papers should contact the POC for guidance and direction in advance of preparation at phone number (703) 545–8652.

A listing of respondents and whether or not their submission was utilized will be made available for public inspection upon request. Open deliberation by the full committee is anticipated on or about July 18, 2016 in Irvine, CA. This meeting will be preceded by standard **Federal Register** notification.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–11417 Filed 5–13–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Threat Reduction Advisory Committee ("the Committee").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The charter and contact information for the Committee's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

The Committee provides the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs, independent advice and recommendations on matters relating to combating Weapons of Mass Destruction (WMD). The Committee shall be composed of no more than 25 members who are eminent authorities in the fields of national defense, geopolitical and national security affairs, WMD, nuclear physics, chemistry, and biology. Members who are not full-time or permanent part-time Federal officers or employees are appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees are appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Each member is appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation. The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Committee and must report all recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Committee's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Committee/subcommittee meeting. The public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Committee meetings. All written statements must be submitted to the Committee's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: May 11, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–11452 Filed 5–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability (NOA) of a Draft Environmental Assessment (EA) Addressing the Closure of Former Defense Fuel Support Point (DFSP) Moffett Field Located in Santa Clara County, California

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of Availability (NOA) of a draft Environmental Assessment (EA) addressing the Closure of Former DFSP Moffett Field located at Santa Clara County, California.

SUMMARY: The DLA announces the availability of a draft EA that analyzes the potential environmental impacts associated with the Proposed Action to close the former DFSP, including removal of underground storage tanks and associated pipelines and equipment. The draft EA has been prepared as required under the National Environmental Policy Act (NEPA), (1969). In addition, the draft EA complies with DLA Regulation 1000.22.

Cooperating Agency: National Aeronautics and Space Administration.

DATES: The public comment period will end June 15, 2016.

ADDRESSES: You may submit comments to one of the following:

- *Mail:* Defense Logistics Agency, Installation Support for Energy, Attn: Stacey Christenbury, 8725 John J. Kingman Road, Room 2828, Fort Belvoir, VA 22060.
- *Email: NEPA@dla.mil.*

FOR FURTHER INFORMATION CONTACT: Stacey Christenbury at 703–767–6557 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *NEPA@dla.mil.*

SUPPLEMENTARY INFORMATION: Comments received by the end of the 30-day period will be considered when preparing the final version of the document. The draft EA is available in hardcopy at the Mountain View Public Library, located at 585 Franklin Street, Mountain View, California 94041, Phone: (650) 903–6337 or electronically at *http://www.dla.mil/Portals/104/Documents/Energy/Publications/E_MoffettUSTClosure_160504.pdf.*

Documents referenced in the draft EA are available upon request.

Dated: May 11, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–11444 Filed 5–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–HA–0192]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Department of Defense Suicide Event Report (DoDSER); DD Form 2996; OMB Control Number 0720–0058.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 1,375.

Responses per Respondent: 1.

Annual Responses: 1,375.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 229.

Needs and Uses: The revision of this information collection requirement is necessary for the continued provision of integrated enterprise and survey data to be used for direct reporting of suicide events and ongoing population-based health surveillance activities. These surveillance activities include the systematic collection, analysis, interpretation, and reporting of outcome-specific data for use in planning, implementation, evaluation, and prevention of suicide behaviors within the Department of Defense. Data is collected on individuals with reportable suicide and self-harm behaviors (to include suicide attempts, self-harm behaviors, and suicidal ideation). All other DoD active and reserve military personnel records collected without evidence of reportable suicide and self-harm behaviors will exist as a control group. Records are integrated from enterprise systems and created and revised by civilian and military personnel in the performance of their duties. We propose to revise the system to make specific changes that have been recommended for improving the completeness of DoDSER data.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: May 11, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–11467 Filed 5–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund—Scale-Up Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

Investing in Innovation Fund—Scale-up Grants.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411A (Scale-up Grants).

Dates:

Applications Available: May 18, 2016.

Deadline for Notice of Intent to Apply: June 6, 2016.

Deadline for Transmittal of Applications: July 15, 2016.

Deadline for Intergovernmental Review: September 13, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund (i3), established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The i3 program is designed to generate and validate solutions to persistent educational challenges and to support the expansion of effective solutions to serve substantially larger numbers of students. The central design element of the i3 program is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project. Applicants proposing practices supported by limited evidence can receive relatively small grants that support the development and initial evaluation of promising practices and help to identify new solutions to pressing challenges; applicants proposing practices supported by evidence from rigorous evaluations, such as large randomized controlled trials, can receive sizable grants to support expansion across the country. This structure provides incentives for applicants to build evidence of effectiveness of their proposed projects and to address the barriers to serving more students across schools, districts, and States.

As importantly, all i3 projects are required to generate additional evidence of effectiveness. All i3 grantees must use part of their budgets to conduct independent evaluations (as defined in this notice) of their projects. This requirement ensures that projects funded under the i3 program contribute significantly to improving the information available to practitioners and policymakers about which practices work, for which types of students, and in what contexts.

The Department awards three types of grants under this program: "Development" grants, "Validation" grants, and "Scale-up" grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration of funding, the level of scale the funded project should reach, and, consequently, the amount of funding available to support the project.

This notice invites applications for Scale-up grants only. The notice inviting applications for Validation grants is published elsewhere in this issue of the **Federal Register**. The notice inviting applications for Development grants was published in the **Federal Register** on April 25, 2016 (81 FR 24070) and is available at *https://www.gpo.gov/fdsys/pkg/F-2016-04-25/pdf/2016-09436.pdf*.

Scale-up grants provide funding to support expansion of projects supported by strong evidence of effectiveness (as defined in this notice) to the national level (as defined in this notice). In addition, as Scale-up projects seek to improve outcomes for students in high-need schools, they also generate important information about an intervention's effectiveness and the contexts for which a practice is most effective. We expect that Scale-up grants will increase practitioners' and policymakers' understanding of the implementation of proven practices and help identify effective approaches to expanding such practices while also maintaining or increasing their effectiveness across contexts.

All Scale-up grantees must evaluate the effectiveness of the i3-supported practice that the project implements and expands. The evaluation of a Scale-up project must identify the core elements of, and codify, the i3-supported practice that the project implements in order to support adoption or replication by other entities. We also expect that evaluations of Scale-up grants will be conducted in a variety of contexts and for a variety of students in order to determine the context(s) and population(s) for which the i3-supported practice is most effective.

We remind LEAs of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) for students who may be served under i3 grants. Any grants in which LEAs participate must be consistent with the rights, protections, and processes established under IDEA for students who are receiving special education and related services or who are in the process of being evaluated to determine their eligibility for such services.

As described later in this notice, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with section 504 of the Rehabilitation Act of 1973, as amended, and the Department's section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether a student with disabilities is specifically targeted as a "high-need student" (as defined in this notice) in a particular grant application, recipients are required to comply with all legal nondiscrimination requirements, including, but not limited to, the obligation to ensure that students with disabilities are not denied access to the benefits of the recipient's program because of their disability. The Department also enforces title II of the Americans with Disabilities Act (ADA), as well as the regulations implementing title II of the ADA, which prohibit discrimination on the basis of disability by public entities.

Furthermore, title VI and title IX of the Civil Rights Act of 1964 prohibit discrimination on the basis of race, color, and national origin, and sex, respectively. On December 2, 2011, the Departments of Education and Justice jointly issued guidance that explains how educational institutions can promote student diversity or avoid racial isolation within the framework of title VI (*e.g.,* through consideration of the racial demographics of neighborhoods when drawing assignment zones for schools or through targeted recruiting efforts). The "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools" is available on the

Department's Web site at *http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf.*[1]

Background:

Through its competitions, the i3 program seeks to improve the academic achievement of students in high-need schools by identifying and scaling promising solutions to pressing challenges in kindergarten through grade 12 (K–12). Now in its seventh year, the i3 program has invested over $1.3 billion—matched by over $200 million in private sector resources—in a portfolio of solutions and rigorous evaluations of several approaches that address critical challenges in education. When selecting the priorities for a given competition, the Department considers several factors including policy priorities, the need for new solutions in a particular priority area, the extent of the existing evidence supporting effective practices in a particular priority area, whether other available funding exists for a particular priority area, and the results and lessons learned from funded projects from prior i3 competitions. This year's competition does not include specific priorities for students with disabilities and English learners, as the program has successfully funded a range of projects serving these high-need populations under i3's broader priorities in previous competitions. Additionally, all applicants continue to be required to serve high-need student populations, and we continue to encourage applicants to consider how their proposed projects could serve students with disabilities or English learners. Applicants are encouraged to design an evaluation that will report findings on English learners, students with disabilities, and other subgroups.

All i3 grantees are expected to improve academic outcomes for high-need students (as defined in this notice). The FY 2016 Scale-up competition includes four absolute priorities. These absolute priorities, as described below, identify persistent challenges in public education for which there are solutions that are supported by rigorous and generalizable evidence. We are particularly interested in supporting such efforts in rural areas. As such, and consistent with the past three competitions, applicants applying under the Serving Rural Communities priority (Absolute Priority 4) must also address one of the other three absolute priorities established for the FY 2016 i3 Scale-up competition. This structure has resulted in a strong set of grantees that are addressing the unique challenges in rural communities. We also include two competitive preference priorities for i3 applicants, as described below.

First, we include an absolute priority for projects designed to implement and support the transition to internationally benchmarked, college- and career-ready academic content standards and associated assessments. Many States have raised the expectations for what schools should teach and their students should learn and do across the K–12 grade span by adopting new, more rigorous standards and assessments aligned to the demands of college and careers. Emerging research confirms that these exams are aligned to more rigorous standards.[2] Educators are now faced with the important task of effectively implementing these higher standards and ensuring their students are adequately prepared for the associated assessments in order to ensure that all students are ready for post-secondary opportunities and their careers. Furthermore, throughout this continuing transition to higher standards and new assessments, schools and school districts need to continue to develop evidence-based approaches to increase the rigor of teaching and learning across various academic settings. For example, efforts are underway in districts across the country to provide teachers and school leaders with rich, student-specific information based on formative and summative assessments to help educators understand why students might be struggling—thereby enabling them to better align their subsequent instruction. Through this priority, the Department seeks to invest in strategies that leverage data and results from internationally benchmarked, college- and career-ready assessments to inform instruction and, ultimately, to support and improve student achievement.

Second, we include an absolute priority aimed at improving science, technology, engineering, and mathematics (STEM) education. Ensuring that all students can access and excel in STEM fields—which include coding and computer science—is essential to meeting the needs of our Nation's economy and encouraging our future prosperity.[3] For example, the President highlights computer science specifically in his Computer Science for All Initiative.[4] Careers in STEM fields are growing as are the knowledge and skills required to compete for and succeed in these specialized jobs.[5] Recent Bureau of Labor Statistics data shows that, between 2010 and 2020, employment in STEM occupations is expected to expand faster than employment in non-STEM occupations (by 17 versus 14 percent).[6] Also, by 2018, 51 percent of STEM jobs are projected to be in computer science-related fields.[7] Moreover, STEM-related skills, such as data analysis and computational and technical literacy, are relevant to a wide array of postsecondary educational and professional pursuits. As such, the Department seeks to provide students with increased access to rigorous and engaging STEM programs and instruction across the K–12 grade span.

Third, we include an absolute priority focused on improving low-performing schools. The Department desires to support whole-school models and strategies that lead to significant and sustained improvement in individual student performance and overall school performance and culture. Thousands of schools do not adequately prepare students to achieve at grade level and struggle to overcome the gaps in student performance across socioeconomic and racial groups.[8] Research shows that the greatest portion of the gap in performance between Black and White students comes from the differences within a school as opposed to differences across school settings.[9] Furthermore, while graduation rates have been steadily improving nationwide, in 17 States, less than 70 percent of students from economically disadvantaged backgrounds graduate from high school.[10] While considerable attention has been paid to these schools in recent years, the pace of progress continues to be slow and school turnaround successes tend to be isolated rather than systematic. Whole-school models that successfully transform school culture and student outcomes can be comprised of a range of strategies, such as harnessing teacher leadership,[11] creating small learning communities, academic interventions, and school redesign. Overall, we seek to support projects that work across schools and districts in multiple regions to transform the learning environment by instituting a range of evidence-based practices.

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[1] In both 2013 and 2014, the Departments reiterated the continued viability of this 2011 guidance after two relevant Supreme Court decisions. Those guidance documents may be found at *www.ed.gov/ocr/letters/colleague-201309.pdf, www.ed.gov/ocr/docs/dcl-qa-201309.pdf,* and *www.ed.gov/ocr/letters/colleague-201405-schuette-guidance.pdf.*

[2] Doorey, N., and Polikoff, M. Evaluating the Content and Quality of Next Generation Assessments (2016). Thomas Fordham Institute. 1016 16th St. NW., 8th Floor, Washington, DC 20036. *http://edex.s3-us-west-2.amazonaws.com/%2802.09%20-%20Final%20Published%29%20Evaluating%20the%20Content%20and%20Quality%20of%20Next%20Generation%20Assessments.pdf.*

[3] Langdon, D., McKittrick, G., Beede, D., Khan, B., and Doms, M. U.S. Department of Commerce Economics and Statistics Administration. STEM: Good Jobs Now and for the Future (July 2011). ESA Issue Brief #03–11. Available at: *www.esa.doc.gov/sites/default/files/stemfinalyjuly14_1.pdf.*

[4] Smith, Megan. Computer Science for All (January 2016). *https://www.whitehouse.gov/blog/2016/01/30/computer-science-all.*

[5] Chairman's Staff of the Joint Economic Committee. Calculations using data from the Bureau of Labor Statistics. Employment Projections: 2010–20. Table 1.7 Occupational Employment and Job Openings Data, Projected 2010–20, and Worker Characteristics, 2010. February 2012. Available at: *http://iedse.org/temp/wp-content/uploads/2015/02/www.iedse_.org_documents_STEM-Education-Preparing-for-the-Jobs-of-the-Future-.pdf.* For the purposes of this calculation, STEM occupations are defined as in the U.S. Department of Commerce's Economics and Statistics Administration report, STEM: Good Jobs Now and for the Future. ESA Issue Brief #03–11. July 2011.

[6] Chairman's Staff of the Joint Economic Committee. Calculations using data from the Bureau of Labor Statistics. Employment Projections: 2010–20. Table 1.7 Occupational Employment and Job Openings Data, Projected 2010–20, and Worker Characteristics, 2010. February 2012. Available at: *http://bls.gov/emp/.* For the purposes of this calculation, STEM occupations are defined as in the U.S. Department of Commerce's Economics and Statistics Administration report, STEM: Good Jobs Now and for the Future. ESA Issue Brief #03–11. July 2011.

[7] Carnevale, A., Smith, N., Melton, M. Center on Education and the Workforce, Georgetown University. Science Technology Engineering Mathematics (2014). Available at: *https://cew.georgetown.edu/wp-content/uploads/2014/11/stem-complete.pdf.*

Finally, we include an absolute priority for serving rural communities. Students living in rural communities face unique challenges, such as lack of access to specialized courses or college advising. Applicants applying under this priority must also address one of the other three absolute priorities established for the FY 2016 i3 Scale-up competition, while serving students enrolled in rural local educational agencies (as defined in this notice).

We also include two competitive preference priorities in the FY 2016 Scale-up competition. First, we include a competitive preference priority for projects that enable the broad adoption of effective practices. This competitive preference priority awards extra points to applicants that will implement systematic methods for identifying and supporting the expansion of these practices. While all Scale-up grantees must codify the core elements of their i3-supported practices, we are interested in projects that focus particularly on the documentation, dissemination, and replication of practices that have been demonstrated to be effective. We are particularly eager to support innovative partnership models to help share, disseminate, and scale effective practices among non-i3 grantees. In addition, practitioners and policymakers need access to strong, reliable data to make informed decisions about adopting effective practices, particularly to replace less effective alternatives. This competitive preference priority supports strategies that identify key elements of effective practices and that capture lessons learned about the implementation of these practices. In addition, an applicant addressing this priority must commit to implementing its approach in multiple settings and locations in order to ensure that the practice can be successfully replicated in different contexts.

Second, to expand the reach of the i3 program and encourage entities that have not previously received an i3 grant to apply, the Department includes a competitive preference priority for novice i3 applicants. A novice i3 applicant is an applicant that has never received a grant under the i3 program. An applicant must identify whether it is a novice applicant when completing the applicant information sheet. Instructions on how to complete the applicant information sheet are included in the application package.

Applicants should carefully review all of the application requirements and the requirements in the *Eligibility Information* section of this notice for instructions on how to demonstrate strong evidence of effectiveness and for information on the other eligibility and program requirements. In summary, applications must address one of the first three absolute priorities for this competition and propose projects designed to implement practices that serve students who are in grades K–12 at some point during the funding period. If an applicant chooses to also address the absolute priority regarding students in rural LEAs, that applicant must also address one of the other three absolute priorities established for the FY 2016 i3 Scale-up competition, while serving students enrolled in rural LEAs (as defined in this notice). Additionally, applicants must be able to show strong evidence of effectiveness (as defined in this notice) for the proposed process, product, strategy, or practice included in their applications. To meet the eligibility requirement regarding the applicant's record of improvement, an applicant must provide, in its application, sufficient supporting data or other information to allow the Department to determine whether the applicant has met the eligibility requirements. Note that, to address the statutory eligibility requirements in paragraphs (a)(1) or (2), and (b) (provided in the statutory eligibility requirements in the *Eligibility Information* section), applicants must provide data that demonstrate a change due to the work of the applicant with an LEA or schools. In other words, applicants must provide data for at least two definitive points in time when addressing this requirement in Appendix C of their applications. Additional information for this requirement can be found under the *Eligibility Information* section of this notice.

The i3 program includes a statutory requirement for a private-sector match for all i3 grantees. For Scale-up grants, an applicant must obtain matching funds or in-kind donations from the private sector equal to at least five percent of its grant award. Each highest-rated application, as identified by the Department following peer review of the applications, must submit evidence of at least 50 percent of the required private-sector match prior to the awarding of an i3 grant. An applicant must provide evidence of the remaining 50 percent of the required private-sector match no later than three months after the project start date (*i.e.,* for the FY 2016 competition, three months after January 1, 2017, or by April 1, 2017). The grant will be terminated if the grantee does not secure its private-sector match by the established deadline.

This notice includes selection criteria for the FY 2016 Scale-up competition that are designed to ensure that applications selected for funding have the potential to generate substantial improvements in student achievement (and other key outcomes), and include well-articulated plans for the implementation and evaluation of the proposed projects. Applicants should review the selection criteria and submission instructions carefully to ensure their applications address this year's criteria.

An entity that submits an application for a Scale-up grant should include the following information in its application: An estimate of the number of students to be served by the project; evidence of the applicant's ability to implement and appropriately evaluate the proposed project; and information about its capacity (*e.g.*, management capacity, financial resources, and qualified personnel) to implement the project at a national level, working directly or through partners. We recognize that LEAs are not typically responsible for taking their practices, strategies, or programs to scale; however, all applicants can and should partner with others to disseminate their effective practices, strategies, and programs and take them to scale.

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[8] PISA Results from 2012. Country Note: United States. *www.oecd.org/pisa/keyfindings/PISA-2012-results-US.pdf.*

[9] Bohrnstedt, G., Kitmitto, S., Ogut, B., Sherman, D., and Chan, D. (2015). *School Composition and the Black-White Achievement Gap* (NCES 2015–018). U.S. Department of Education, Washington, DC: National Center for Education Statistics. Retrieved September 24, 2015 from *http://nces.ed.gov/pubsearch.*

[10] U.S. Department of Education, National Center for Education Statistics (NCES): *https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp.*

[11] School Turnarounds: How Successful Principals Use Teacher Leadership. (March 2016). *http://publicimpact.com/school-turnarounds-how-successful-principals-use-teacher-leadership/.*

The Department will screen applications that are submitted for Scale-up grants in accordance with the requirements in this notice and determine which applications meet the eligibility and other requirements. Peer reviewers will review all applications for Scale-up grants that are submitted by the established deadline.

Applicants should note, however, that we may screen for eligibility at multiple points during the competition process, including before and after peer review; applicants that are determined to be ineligible will not receive a grant award regardless of peer reviewer scores or comments. If we determine that a Scale-up grant application is not supported by strong evidence of effectiveness, or that the applicant does not demonstrate the required prior record of improvement, or does not meet any other i3 requirement, the application will not be considered for funding.

Please note that on December 10, 2015, the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965, was signed into law. ESSA establishes the Education Innovation and Research Program (EIR), a new program that builds on the work led by the i3 program and its grantees. Accordingly, this FY 2016 i3 competition will be the final i3 competition under current statute and regulations. Pending congressional appropriations, the Department will launch the first EIR competition in FY 2017.

Priorities: This competition includes four absolute priorities and two competitive preference priorities. Absolute Priority 1 is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities). Absolute Priorities 2, 3, and 4 and both competitive preference priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 27, 2013 (78 FR 18681) (2013 i3 NFP).

Absolute Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

Applicants must address one of the first four absolute priorities. An applicant that addresses Absolute Priority 4, Serving Rural Communities, must also address one of the first three absolute priorities. Because applications will be rank ordered by absolute priority, applicants must clearly identify the specific absolute priority that the proposed project addresses. Applications submitted under Absolute Priority 4 will be ranked with other applications under Absolute Priority 4, and not included in the ranking for the additional priority that the applicant identified. This design helps us ensure that applications under Absolute Priority 4 receive an "apples to apples" comparison with other applicants addressing the Serving Rural Communities priority.

These priorities are:

Absolute Priority 1—Implementing Internationally Benchmarked College- and Career-Ready Standards and Assessments.

Under this priority, we provide funding to projects that are designed to support the implementation of, and transition to, internationally benchmarked college- and career-ready standards and assessments, including developing and implementing strategies that use the standards and information from assessments to inform classroom practices that meet the needs of all students.

Absolute Priority 2—Improving Science, Technology, Engineering, and Mathematics (STEM) Education.

Under this priority, we provide funding to projects addressing pressing needs for improving STEM education.

Absolute Priority 3—Improving Low-Performing Schools.

Under this priority, we provide funding to projects that address designing whole-school models and implementing processes that lead to significant and sustained improvement in individual student performance and overall school performance and culture. These models may incorporate such strategies as providing strong school leadership; strengthening the instructional program; embedding professional development that provides teachers with frequent feedback to increase the rigor and effectiveness of their instructional practice; redesigning the school day, week, or year; using data to inform instruction and improvement; establishing a school environment that promotes a culture of high expectations; addressing non-academic factors that affect student achievement; and providing ongoing mechanisms for parent and family engagement.

Other requirements related to Priority 3:

To meet this priority, a project must serve schools among (1) the lowest-performing schools in the State on academic performance measures; (2) schools in the State with the largest within-school performance gaps between student subgroups described in section 1111(b)(2) of the ESEA; or (3) secondary schools in the State with the lowest graduation rate over a number of years or the largest within-school gaps in graduation rates between student subgroups described in section 1111(b)(2) of the ESEA. Additionally, projects funded under this priority must complement the broader turnaround efforts of the school(s), LEA(s), or State(s) where the projects will be implemented.

Absolute Priority 4—Serving Rural Communities.

Under this priority, we provide funding to projects that address one of the absolute priorities established for the FY 2016 Scale-up i3 competition and under which the majority of students to be served are enrolled in rural local educational agencies (as defined in this notice).

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award five additional points to applications that meet the requirements of the first competitive preference priority and we award three additional points to applications that meet the requirements of the second competitive preference priority.

Applicants may address both competitive preference priorities. An applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points under any competitive preference priority that the applicant fails to clearly identify.

These priorities are:

Competitive Preference Priority 1—Enabling Broad Adoption of Effective Practices (0 or 5 points).

Under this priority, we provide funding to projects that enable broad adoption of effective practices. An application proposing to address this priority must, as part of its application:

(a) Identify the practice or practices that the application proposes to prepare for broad adoption, including formalizing the practice (*i.e.,* establish and define key elements of the practice), codifying (*i.e.,* develop a guide or tools to support the dissemination of information on key elements of the practice), and explaining why there is a need for formalization and codification.

(b) Evaluate different forms of the practice to identify the critical components of the practice that are crucial to its success and sustainability, including the adaptability of critical components to different teaching and learning environments and to diverse learners.

(c) Provide a coherent and comprehensive plan for developing materials, training, toolkits, or other supports that other entities would need in order to implement the practice effectively and with fidelity.

(d) Commit to assessing the replicability and adaptability of the practice by supporting the implementation of the practice in a variety of locations during the project period using the materials, training, toolkits, or other supports that were developed for the i3-supported practice.

Competitive Preference Priority 2—Supporting Novice i3 Applicants (0 or 3 points).

Eligible applicants that have never directly received a grant under this program.

Definitions:

The definitions of "large sample," "logic model," "multi-site sample," "national level," "quasi-experimental design study," "randomized controlled trial," "regional level," "relevant outcome," "strong evidence of effectiveness," and "What Works Clearinghouse (WWC) Evidence Standards" are from 34 CFR 77.1. All other definitions are from the 2013 i3 NFP. We may apply these definitions in any year in which this program is in effect.

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an i3 grant jointly with an eligible nonprofit organization.

High-minority school is defined by a school's LEA in a manner consistent with the corresponding State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the ESEA. The applicant must provide, in its i3 application, the definition(s) used.

High-need student means a student at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under title I of the ESEA.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a process, product, strategy, or practice and are implementing it.

Innovation means a process, product, strategy, or practice that improves (or is expected to improve) significantly upon the outcomes reached with status quo options and that can ultimately reach widespread effective usage.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units).

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State.

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy or practice is designed to improve; consistent with the specific goals of a program.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Strong evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample. (Note: Multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

(ii) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which: Meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

Student achievement means—

(a) For grades and subjects in which assessments are required under ESEA section 1111(b)(3): (1) A student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b), provided they are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under ESEA section 1111(b)(3): Alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. An applicant may also include other measures that are rigorous and comparable across classrooms.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: ARRA, Division A, Section 14007, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2013 i3 NFP. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements or discretionary grants.

Estimated Available Funds: $103,100,000.

These estimated available funds are the total available for all three types of grants under the i3 program (Development, Validation, and Scale-up grants). Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 or later years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Development grants: Up to $3,000,000.

Validation grants: Up to $12,000,000.

Scale-up grants: Up to $20,000,000.

Note: The upper limit of the range of awards (*e.g.,* $20,000,000 for Scale-up grants) is referred to as the "maximum amount of awards" under *Other* in section III of this notice.

Estimated Average Size of Awards:

Development grants: $3,000,000.

Validation grants: $11,500,000.

Scale-up grants: $19,000,000.

Estimated Number of Awards:

Development grants: 9–11 awards.

Validation grants: 2–3 awards.

Scale-up grants: 0–2 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Innovations that Improve Achievement for High-Need Students:* All grantees must implement practices that are designed to improve student achievement (as defined in this notice) or student growth (as defined in this notice), close achievement gaps, decrease dropout rates, increase high school graduation rates (as defined in this notice), or increase college enrollment and completion rates for high-need students (as defined in this notice).

2. *Innovations that Serve Kindergarten-through-Grade-12 (K–12) Students:* All grantees must implement practices that serve students who are in grades K–12 at some point during the funding period. To meet this requirement, projects that serve early learners (*i.e.,* infants, toddlers, or preschoolers) must provide services or supports that extend into kindergarten or later years, and projects that serve postsecondary students must provide services or supports during the secondary grades or earlier.

3. *Eligible Applicants:* Entities eligible to apply for i3 grants include either of the following:

(a) An LEA.

(b) A partnership between a nonprofit organization and—

(1) One or more LEAs; or

(2) A consortium of schools.

Statutory Eligibility Requirements: Except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows, to be eligible for an award, an eligible applicant must—

(a)(1) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(2) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(b) Have made significant improvements in other areas, such as high school graduation rates (as defined in this notice) or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(c) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that organizations in the private sector will provide matching funds in order to help bring results to scale; and

(d) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them.

Note: An entity submitting an application should provide, in Appendix C, under "Other Attachments Form," of its application, information addressing the eligibility requirements described in this section. An applicant must provide, in its application, sufficient supporting data or other information to allow the Department to determine whether the applicant has met the eligibility requirements. Note that, to address the statutory eligibility requirements in paragraphs (a)(1) or (2), and (b), applicants must provide data that demonstrate a change due to the work of the applicant with an LEA or schools. In other words, applicants must provide data for at least two definitive points in time when addressing this requirement in Appendix C of their applications. For further guidance, please refer to the definition of "student achievement" in this notice, and the question and answer Webinar for FY 2016 i3 Scale-up and Validation Applications. Additionally, information on the statutory eligibility requirements can be found on the i3 Web site at *http://innovation.ed.gov/what-we-do/innovation/investing-in-innovation-i3/*. If the Department determines that an applicant has provided insufficient information in its application, the applicant will not have an opportunity to provide additional information.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute specifies that an eligible applicant that includes a nonprofit organization meets the requirements in paragraphs (a) and (b) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its i3 grant an LEA or a consortium of schools that meets the requirements in paragraphs (a) and (b) of the eligibility requirements in this notice.

In addition, the authorizing statute specifies that an eligible applicant that includes a nonprofit organization meets the requirements of paragraph (c) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement for private-sector matching.

4. *Cost Sharing or Matching:* To be eligible for an award, an applicant must demonstrate that one or more private-sector organizations, which may include philanthropic organizations, will provide matching funds in order to help bring project results to scale. An eligible Scale-up applicant must obtain matching funds, or in-kind donations, equal to at least five percent of its Federal grant award. The highest-rated eligible applicants must submit evidence of 50 percent of the required private-sector matching funds following the peer review of applications. A Federal i3 award will not be made unless the applicant provides adequate evidence that the 50 percent of the required private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement. An applicant must provide evidence of the remaining 50 percent of required private-sector match three months after the project start date.

The Secretary may consider decreasing the matching requirement on a case-by-case basis, and only in the most exceptional circumstances. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request that the Secretary reduce the matching-level requirement, along with a statement of the basis for the request.

Note: An applicant that does not provide a request for a reduction of the matching-level requirement in its application may not submit that request at a later time.

5. *Other:* The Secretary establishes the following requirements for the i3 program. These requirements are from the 2013 i3 NFP. We may apply these requirements in any year in which this program is in effect.

- *Evidence Standards:* To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence of effectiveness (as defined in this notice).

Note: An applicant should identify up to four study citations to be reviewed against What Works Clearinghouse Evidence Standards for the purposes of meeting the i3 evidence standard requirement. An applicant should clearly identify these citations in Appendix D, under the "Other Attachments Form," of its application. The Department will not review a study citation that an applicant fails to clearly identify for review. In addition to the four study citations, applicants should include a description of the intervention(s) the applicant plans to implement and the intended student outcomes that the intervention(s) attempts to impact in Appendix D.

An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available; or, in the full application, include copies of evidence in Appendix D. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC will submit a query to the study author(s) to gather information for use in determining a study rating. Authors are asked to respond to queries within ten business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study will be deemed ineligible under the grant competition. After the grant competition closes, the WWC will continue to include responses to author queries and will make updates to study reviews as necessary. However, the competition can only take into account information that is available at the time the competition is open.

Note: The evidence standards apply to the prior research that supports the effectiveness of the proposed project. The i3 program does not restrict the source of prior research providing evidence for the proposed project. As such, an applicant could cite prior research in Appendix D for studies that were conducted by another entity (*i.e.,* an entity that is not the applicant) so long as the prior research studies cited in the application are relevant to the effectiveness of the proposed project.

- *Funding Categories:* An applicant will be considered for an award only for the type of i3 grant (*i.e.,* Development, Validation, and Scale-up grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.
- *Limit on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) in any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) no grantee may receive in a single year new i3 grant awards that total an amount greater than the sum of the maximum amount of funds for a Scale-up grant and the maximum amount of funds for a Development grant for that year. For example, in a year when the maximum award value for a Scale-up grant is $20 million and the maximum award value for a Development grant is $3 million, no grantee may receive in a single year new grants totaling more than $23 million.
- *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant and, if funded, as the grantee, may make subgrants to one or more entities in the partnership.
- *Evaluation:* The grantee must conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the i3-supported practice (as implemented at the proposed level of scale) on a relevant outcome (as defined in this notice). The grantee must make broadly available digitally and free of charge, through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure that the data from its evaluation are made available to third-party researchers consistent with applicable privacy requirements.

In addition, the grantee and its independent evaluator must agree to cooperate with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department, within 100 days of a grant award, an updated comprehensive evaluation plan in a format and using such tools as the Department may require. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation. All of these updates must be consistent with the scope and objectives of the approved application.

- *Communities of Practice:* Grantees must participate in, organize, or facilitate, as appropriate, communities of practice for the i3 program. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them.
- *Management Plan:* Within 100 days of a grant award, the grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://innovation.ed.gov/what-we-do/innovation/investing-in-innovation-i3/.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.411A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Deadline for Notice of Intent to Submit Application: June 6, 2016.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) the absolute priority the applicant intends to address. Applicants may access this form online at *https://www.surveymonkey.com/r/KDJQ3B3.* Applicants that do not complete this form may still submit an application.

Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative for a Scale-up grant application to no more than 50 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that they were unable to include within the page limits for the narrative. Applicants should use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit for the application does not apply to part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support of the application. However, the page limit does apply to all of the application narrative section of the application.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the i3 program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Consistent with the process followed in the prior i3 competitions, we plan on posting the project narrative section of funded i3 applications on the Department's Web site. Accordingly, you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times: Applications Available:* May 18, 2016.

Deadline for Notice of Intent to Submit Applications: June 6, 2016.

Informational Meetings: The i3 program intends to hold Webinars designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these meetings will be provided on the i3 Web site at *http://innovation.ed.gov/what-we-do/innovation/investing-in-innovation-i3/*.

Deadline for Transmittal of Applications: July 15, 2016.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 13, 2016.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform*. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:* Applications for grants for the i3 program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the i3 program, CFDA number 84.411A (Scale-up grants), must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the i3 program at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.411, not 84.411A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov,* the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov,* it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202. FAX: (202) 401–4123.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411A) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Scale-up competition are from the 2013 i3 NFP and 34 CFR 75.210, and are listed below.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 10 points).*

In determining the significance of the project, the Secretary considers the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project. (34 CFR 75.210)

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (34 CFR 75.210)

(3) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (34 CFR 75.210)

B. *Strategy to Scale (up to 35 points).*

In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application. (34 CFR 75.210)

(2) The extent to which the applicant will use grant funds to address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale proposed in the application. (2013 i3 NFP)

C. *Quality of the Project Design and Management Plan (up to 35 points).*

In determining the quality of the proposed project design, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (34 CFR 75.210)

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210)

(3) The clarity and coherence of the applicant's multi-year financial and operating model and accompanying plan to operate the project at a national or regional level (as defined in this notice) during the project period. (2013 i3 NFP)

(4) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (34 CFR 75.210)

D. *Quality of the Project Evaluation (up to 20 points).*

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations. (34 CFR 75.210)

(2) The clarity and importance of the key questions to be addressed by the project evaluation, and the appropriateness of the methods for how each question will be addressed. (2013 i3 NFP)

(3) The extent to which the evaluation will study the project at the proposed level of scale, including, where appropriate, generating information about potential differential effectiveness of the project in diverse settings and for diverse student population groups. (2013 i3 NFP)

(4) The extent to which the evaluation plan includes a clear and credible analysis plan, including a proposed sample size and minimum detectable effect size that aligns with the expected project impact, and an analytic approach for addressing the research questions. (2013 i3 NFP)

(5) The extent to which the evaluation plan clearly articulates the key components and outcomes of the project, as well as a measurable threshold for acceptable implementation. (2013 i3 NFP)

(6) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2013 i3 NFP)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/*. In addition, applicants may view two optional Webinar recordings that were hosted by the Institute of Education Sciences. The first Webinar discussed strategies for designing and executing well-designed quasi-experimental design studies and is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=23.* The second Webinar focused on more rigorous evaluation designs, discussing strategies for designing and executing studies that meet WWC evidence standards without reservations. This Webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

For the application review process, we will use independent peer reviewers with varied backgrounds and professions including pre-kindergarten-grade 12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. All reviewers will be thoroughly screened for conflicts of interest to ensure a fair and competitive review process.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice. For Scale-up grant applications we intend to conduct a single-tier review. If an eligible applicant addresses the first competitive preference priority (Enabling Broad Adoption of Effective Practices), reviewers will review and score this competitive preference priority. If competitive preference priority points are awarded, those points will be included in the eligible applicant's overall score. If an eligible applicant addresses the second competitive preference priority (Supporting Novice i3 Applicants), the Department will review its list of previous i3 grantees in scoring this competitive preference priority.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The overall purpose of the i3 program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the i3 Scale-up grants.

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant that implement a completed well-designed, well-implemented, and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with a completed well-designed, well-implemented, and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312 Washington, DC 20202. Telephone: (202) 453–7122. FAX: (202) 401–4123 or by email: *i3@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to either program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 11, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–11531 Filed 5–13–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund—Validation Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Investing in Innovation Fund—Validation Grants

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411B (Validation Grants).

DATES: Applications Available: May 18, 2016. Deadline for Notice of Intent to Apply: June 6, 2016. Deadline for Transmittal of Applications: July 15, 2016. Deadline for Intergovernmental Review: September 13, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund (i3), established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The i3 program is designed to generate and validate solutions to persistent educational challenges and to support the expansion of effective solutions to serve substantially larger numbers of students. The central design element of the i3 program is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project. Applicants proposing practices supported by limited evidence can receive relatively small grants that support the development and initial evaluation of promising practices and help to identify new solutions to pressing challenges; applicants proposing practices supported by evidence from rigorous evaluations, such as large randomized controlled trials, can receive sizable grants to support expansion across the country. This structure provides incentives for applicants to build evidence of effectiveness of their proposed projects and to address the barriers to serving more students across schools, districts, and States.

As importantly, all i3 projects are required to generate additional evidence of effectiveness. All i3 grantees must use part of their budgets to conduct independent evaluations (as defined in this notice) of their projects. This requirement ensures that projects funded under the i3 program contribute significantly to improving the information available to practitioners and policymakers about which practices work, for which types of students, and in what contexts.

The Department awards three types of grants under this program: "Development" grants, "Validation" grants, and "Scale-up" grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration of funding, the level of scale the funded project should reach, and, consequently, the amount of funding available to support the project.

This notice invites applications for Validation grants only. The notice inviting applications for Scale-up grants is published elsewhere in this issue of the **Federal Register**. The notice inviting applications for Development grants was published in the **Federal Register** on April 25, 2016 (81 FR 24070) and is available at *https://www.gpo.gov/fdsys/pkg/FR-2016-04-25/pdf/2016-09436.pdf.*

Validation grants provide funding to support expansion of projects supported by moderate evidence of effectiveness (as defined in this notice) to the regional level (as defined in this notice) or to the national level (as defined in this notice). In addition, as Validation projects seek to improve outcomes for students in high need schools, they also generate important information about an intervention's effectiveness and the contexts for which a practice is most effective. We expect that Validation grants will increase practitioners' and policymakers' understanding of the implementation of proven practices, and help identify effective approaches to expanding such practices while also maintaining or increasing their effectiveness across contexts.

All Validation grantees must evaluate the effectiveness of the i3-supported practice that the project implements and expands. The evaluation of a Validation project must identify the core elements of, and codify, the i3-supported practice that the project implements in order to support adoption or replication by other entities. We also expect that evaluations of Validation grants will be conducted and disaggregated in a variety of contexts and for a variety of students in order to determine the context(s) and population(s) for which the i3-supported practice is most effective.

We remind LEAs of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) for students who may be served under i3 grants. Any grants in which LEAs participate must be consistent with the rights, protections, and processes established under IDEA for students who are receiving special education and related services or who are in the process of being evaluated to determine their eligibility for such services.

As described later in this notice, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with section 504 of the Rehabilitation Act of 1973, as amended, and the Department's section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether a student with disabilities is specifically targeted as a "high-need student" (as defined in this notice) in a particular grant application, recipients are required to comply with all legal nondiscrimination requirements, including, but not limited to the obligation to ensure that students with disabilities are not denied access to the benefits of the recipient's program because of their disability. The Department also enforces title II of the Americans with Disabilities Act (ADA), as well as the regulations implementing title II of the ADA, which prohibit discrimination on the basis of disability by public entities.

Furthermore, title VI and title IX of the Civil Rights Act of 1964 prohibit discrimination on the basis of race, color, and national origin, and sex, respectively. On December 2, 2011, the Departments of Education and Justice jointly issued guidance that explains how educational institutions can promote student diversity or avoid racial isolation within the framework of title VI (*e.g.,* through consideration of the racial demographics of neighborhoods when drawing assignment zones for schools or through targeted recruiting efforts). The "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools" is available on the Department's Web site at *http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf.*[1]

Background

Through its competitions, the i3 program seeks to improve the academic achievement of students in high-need schools by identifying and scaling promising solutions to pressing challenges in kindergarten through grade 12 (K–12). Now in its seventh year, the i3 program has invested over $1.3 billion—matched by over $200 million in private sector resources—in a portfolio of solutions and rigorous evaluations of several approaches that address critical challenges in education. When selecting the priorities for a given competition, the Department considers several factors including policy priorities, the need for new solutions in a particular priority area, the extent of the existing evidence supporting effective practices in a particular priority area, whether other available funding exists for a particular priority area, and the results and lessons learned from funded projects from prior i3 competitions. This year's competition does not include specific priorities for students with disabilities and English learners, as the program has successfully funded a range of projects serving these high-need populations under i3's broader priorities in previous competitions. Additionally, all applicants continue to be required to serve high-need student populations, and we continue to encourage applicants to consider how their proposed projects could serve students with disabilities or English learners. Applicants are encouraged to design an evaluation that will report findings on English learners, students with disabilities, and other subgroups.

All i3 grantees are expected to improve academic outcomes for high-need students (as defined in this notice). The FY 2016 Validation competition includes four absolute priorities. These absolute priorities are intended to address persistent challenges in public education for which there are solutions that are supported by rigorous evidence. We are particularly interested in supporting such efforts in rural areas. As such, and consistent with the past three competitions, applicants applying under the Serving Rural Communities priority (Absolute Priority 4) must also address one of the other three absolute priorities established for the FY 2016 i3 Validation competition. This structure has resulted in a strong set of grantees that are addressing the unique challenges in rural communities. We also include one competitive preference priority for novice i3 applicants.

First, we include an absolute priority for projects designed to implement, and support the transition to, internationally benchmarked, college- and career-ready academic content standards and associated assessments. Many States have raised the expectations for what schools should teach and their students should learn and do across the K–12 grade span by adopting new, more rigorous standards and assessments aligned to the demands of college and careers. Emerging research confirms that these exams are aligned to more rigorous standards.[2] Educators are now faced with the important task of effectively implementing these higher standards and ensuring their students are adequately prepared for the associated assessments in order to ensure that all students are ready for post-secondary opportunities and their careers. Furthermore, throughout this continuing transition to higher standards and new assessments, schools and school districts need to continue to develop evidence-based approaches to increase the rigor of teaching and learning across various academic settings. For example, efforts are underway in districts across the country to provide teachers and school leaders with rich, student-specific information based on formative and summative assessments to help educators understand why students might be struggling—thereby enabling them to better align their subsequent instruction. Through this priority, the Department seeks to invest in strategies that leverage data and results from internationally benchmarked, college- and career-ready assessments to inform instruction and, ultimately, to support and improve student achievement.

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[1] In both 2013 and 2014, the Departments reiterated the continued viability of this 2011 guidance after two relevant Supreme Court decisions. Those guidance documents may be found at *www.ed.gov/ocr/letters/colleague-201309.pdf, www.ed.gov/ocr/docs/dcl-qa-201309.pdf,* and *www.ed.gov/ocr/letters/colleague-201405-schuette-guidance.pdf.*

[2] Doorey, N. and Polikoff, M. Evaluating the Content and Quality of Next Generation Assessments (2016). Washington, DC: Thomas Fordham Institute. Available at: *http://edex.s3-us-west-2.amazonaws.com/%2802.09%20-%20Final%20Published%29%20Evaluating%20the%20Content%20and%20Quality%20of%20Next%20Generation%20Assessments.pdf.*

Second, we include an absolute priority for projects promoting science, technology, engineering and mathematics (STEM) education. Ensuring that all students can access and excel in STEM fields—which includes coding and computer science—is essential to meeting the needs of our Nation's economy and to our future prosperity.[3] For example, the President highlights computer science specifically in his Computer Science for All Initiative.[4] Careers in STEM fields are growing, as are the knowledge and skills required to compete for and succeed in these specialized jobs.[5] Recent Bureau of Labor Statistics data shows that, between 2010 and 2020, employment in STEM occupations is expected to expand faster than employment in non-STEM occupations (by 17 versus 14 percent).[6] Also, by 2018, 51 percent of STEM jobs are projected to be in computer science-related fields.[7] Moreover, STEM-related skills, such as data analysis and computational and technical literacy, are relevant to a wide array of postsecondary educational and professional pursuits. The Department seeks to provide students with increased access to rigorous and engaging STEM programs and instruction grounded in authentic STEM experiences (as defined in this notice), in both formal and informal learning settings, and resulting in improved STEM-related academic outcomes.

Third, we include an absolute priority focused on improving low-performing schools. The Department looks to support whole-school models and strategies that lead to significant and sustained improvement in individual student performance and overall school performance and culture. Thousands of schools do not adequately prepare students to achieve at grade level and struggle to overcome the gaps in student performance across socioeconomic and racial groups.[8] Research shows that the greatest portion of the gap in performance between Black and White students comes from the differences within a school as opposed to differences across school settings.[9] Furthermore, while graduation rates have been steadily improving nationwide, in 17 States, less than 70 percent of students from economically disadvantaged backgrounds graduate from high school.[10] While considerable attention has been paid to these schools in recent years, the pace of progress continues to be slow and school turnaround successes tend to be isolated rather than systematic. Whole-school models that successfully transform school culture and student outcomes can be comprised of a range of strategies, such as harnessing teacher leadership,[11] creating small learning communities, academic interventions, and school redesign. Overall, we seek to support projects that work across schools and districts in multiple regions to transform the learning environment by instituting a range of evidence-based practices.

Finally, we include an absolute priority for serving rural communities. Students living in rural communities face unique challenges, such as lack of access to specialized courses or college advising. Applicants applying under this priority must also address one of the other three absolute priorities established for the FY 2016 i3 Validation competition, while serving students enrolled in rural local educational agencies (as defined in this notice).

We also include one competitive preference priority in the FY 2016 Validation competition. To expand the reach of the i3 program and encourage entities that have not previously received an i3 grant to apply, the Department includes a competitive preference priority for novice i3 applicants. A novice i3 applicant is an applicant that has never received a grant under the i3 program. An applicant must identify whether it is a novice applicant when completing the applicant information sheet. Instructions on how to complete the applicant information sheet are included in the application package.

Applicants should carefully review all of the requirements in the *Eligibility Information* section of this notice for instructions on how to demonstrate moderate evidence of effectiveness and for information on the other eligibility, program, and application requirements. In summary, applications must address one of the first three absolute priorities for this competition and propose projects designed to implement practices that serve students who are in grades K–12 at some point during the funding period. If an applicant chooses to also address the absolute priority regarding students in rural LEAs, that applicant must also address one of the other three absolute priorities established for the FY 2016 i3 Validation competition, while serving students enrolled in rural LEAs (as defined in this notice). Additionally, applicants must be able to show moderate evidence of effectiveness for the proposed process, product, strategy, or practice included in their applications. To meet the eligibility requirement regarding the applicant's record of improvement, an applicant must provide, in its application, sufficient supporting data or other information to allow the Department to determine whether the applicant has met the eligibility requirements. Note that, to address the statutory eligibility requirements in paragraphs (a)(1) or (2), and (b) of the statutory eligibility requirements (provided in the *Eligibility Information* section), applicants must provide data that demonstrate a change due to the work of the applicant with an LEA or schools. In other words, applicants must provide data for at least two definitive points in time when addressing this requirement in Appendix C of their applications. Additional information for this requirement can be found under the *Eligibility Information* section of this notice.

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[3] Langdon, D., McKittrick, G., Beede, D., Khan, B., and Doms, M. U.S. Department of Commerce Economics and Statistics Administration. STEM: Good Jobs Now and for the Future (July 2011). ESA Issue Brief #03–11. Available at: *www.esa.doc.gov/sites/default/files/stemfinalyjuly14_1.pdf.*

[4] Smith, Megan. Computer Science for All (January 2016). *https://www.whitehouse.gov/blog/2016/01/30/computer-science-all.*

[5] Chairman's Staff of the Joint Economic Committee. Calculations using data from the Bureau of Labor Statistics. Employment Projections: 2010–20. Table 1.7 Occupational Employment and Job Openings Data, Projected 2010–20, and Worker Characteristics, 2010. February 2012. Available at: *http://iedse.org/temp/wp-content/uploads/2015/02/www.iedse_.org_documents_STEM-Education-Preparing-for-the-Jobs-of-the-Future-.pdf.* For the purposes of this calculation, STEM occupations are defined as in the U.S. Department of Commerce's Economics and Statistics Administration report, STEM: Good Jobs Now and for the Future. ESA Issue Brief #03–11. July 2011.

[6] Chairman's Staff of the Joint Economic Committee. Calculations using data from the Bureau of Labor Statistics. Employment Projections: 2010–20. Table 1.7 Occupational Employment and Job Openings Data, Projected 2010–20, and Worker Characteristics, 2010. February 2012. Available at: *http://bls.gov/emp/.* For the purposes of this calculation, STEM occupations are defined as in the U.S. Department of Commerce's Economics and Statistics Administration report, STEM: Good Jobs Now and for the Future. ESA Issue Brief #03–11. July 2011.

[7] Carnevale, A., Smith, N., and Melton, M. Center on Education and the Workforce, Georgetown University. Science Technology Engineering Mathematics (2014). Available at: *https://cew.georgetown.edu/wp-content/uploads/2014/11/stem-complete.pdf.*

[8] PISA Results from 2012. Country Note: United States. *www.oecd.org/pisa/keyfindings/PISA-2012-results-US.pdf.*

[9] Bohrnstedt, G., Kitmitto, S., Ogut, B., Sherman, D., and Chan, D. (2015). *School Composition and the Black-White Achievement Gap* (NCES 2015–018). U.S. Department of Education, Washington, DC: National Center for Education Statistics. Retrieved September 24, 2015 from *http://nces.ed.gov/pubsearch.*

[10] U.S. Department of Education, National Center for Education Statistics (NCES): *https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp.*

[11] School Turnarounds: How Successful Principals Use Teacher Leadership. (March 2016). *http://publicimpact.com/school-turnarounds-how-successful-principals-use-teacher-leadership/.*

The i3 program includes a statutory requirement for a private-sector match for all i3 grantees. For Validation grants, an applicant must obtain matching funds or in-kind donations from the private sector equal to at least 10 percent of its grant award. Each highest-rated application, as identified by the Department following peer review of the applications, must submit evidence of at least 50 percent of the required private-sector match prior to the awarding of an i3 grant. An applicant must provide evidence of the remaining 50 percent of the required private-sector match no later than three months after the project start date (*i.e.,* for the FY 2016 competition, three months after January 1, 2017, or by April 1, 2017). The grant will be terminated if the grantee does not secure its private-sector match by the established deadline.

This notice includes selection criteria for the FY 2016 Validation competition that are designed to ensure that applications selected for funding have the potential to generate substantial improvements in student achievement (and other key outcomes) and include well-articulated plans for the implementation and evaluation of the proposed projects. Applicants should review the selection criteria and submission instructions carefully to ensure their applications address this year's criteria.

An entity that submits an application for a Validation grant should include the following information in its application: An estimate of the number of students to be served by the project; evidence of the applicant's ability to implement and appropriately evaluate the proposed project; and information about its capacity (*e.g.,* management capacity, financial resources, and qualified personnel) to implement the project at a national or regional level, working directly or through partners. We recognize that LEAs are not typically responsible for taking their practices, strategies, or programs to scale; however, all applicants can and should partner with others to disseminate their effective practices, strategies and programs and take them to scale.

The Department will screen applications that are submitted for Validation grants in accordance with the requirements in this notice and determine which applications meet the eligibility and other requirements. Peer reviewers will review all applications for Validation grants that are submitted by the established deadline.

Applicants should note, however, that we may screen for eligibility at multiple points during the competition process, including before and after peer review; applicants that are determined to be ineligible will not receive a grant award regardless of peer reviewer scores or comments. If we determine that a Validation grant application is not supported by moderate evidence of effectiveness, or that the applicant does not demonstrate the required prior record of improvement, or does not meet any other i3 requirement, the application will not be considered for funding.

Please note that on December 10, 2015, the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965, was signed into law. ESSA establishes the Education Innovation and Research Program (EIR), a new program that builds on the work led by the i3 program and its grantees. Accordingly, this FY 2016 i3 competition will be the final i3 competition under current statute and regulations. Pending congressional appropriations, the Department will launch the first EIR competition in FY 2017.

Priorities: This competition includes four absolute priorities and one competitive preference priority. Absolute Priorities 1 and 2 are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Supplemental Priorities). Absolute Priorities 3 and 4 and the competitive preference priority are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 27, 2013 (78 FR 18681) (2013 i3 NFP).

Absolute Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

Applicants must address one of the first four absolute priorities. An applicant that addresses Absolute Priority 4, Serving Rural Communities, must also address one of the first three absolute priorities. Because applications will be rank ordered by absolute priority, applicants must clearly identify the specific absolute priority that the proposed project addresses. Applications submitted under Absolute Priority 4 will be ranked with other applications under Absolute Priority 4 and not included in the ranking for the additional priority that the applicant identified. This design helps us ensure that applications under Absolute Priority 4 receive an "apples to apples" comparison with other applicants addressing the Serving Rural Communities priority.

These priorities are:

Absolute Priority 1—Implementing Internationally Benchmarked College- and Career-Ready Standards and Assessments.

Under this priority, we provide funding to projects that are designed to support the implementation of, and transition to, internationally benchmarked college- and career-ready standards and assessments, including developing and implementing strategies that use the standards and information from assessments to inform classroom practices that meet the needs of all students.

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education.

Under this priority, we provide funding to projects that are designed to improve Student Achievement or other related outcomes by providing students with increased access to rigorous and engaging STEM coursework and Authentic STEM Experiences (as defined in this notice) that may be integrated across multiple settings.

Absolute Priority 3—Improving Low-Performing Schools.

Under this priority, we provide funding to projects that address designing whole-school models and implementing processes that lead to significant and sustained improvement in individual student performance and overall school performance and culture. These models may incorporate such strategies as providing strong school leadership; strengthening the instructional program; embedding professional development that provides teachers with frequent feedback to increase the rigor and effectiveness of their instructional practice; redesigning the school day, week, or year; using data to inform instruction and improvement; establishing a school environment that promotes a culture of high expectations; addressing non-academic factors that affect student achievement; and providing ongoing mechanisms for parent and family engagement.

Other requirements related to Priority 3:

To meet this priority, a project must serve schools among (1) the lowest-performing schools in the State on academic performance measures; (2) schools in the State with the largest within-school performance gaps between student subgroups described in section 1111(b)(2) of the ESEA; or (3) secondary schools in the State with the lowest graduation rate over a number of years or the largest within-school gaps in graduation rates between student subgroups described in section 1111(b)(2) of the ESEA. Additionally, projects funded under this priority must complement the broader turnaround efforts of the school(s), LEA(s), or State(s) where the projects will be implemented.

Absolute Priority 4—Serving Rural Communities.

Under this priority, we provide funding to projects that address one of the absolute priorities established for the FY 2016 Validation i3 competition and under which the majority of students to be served are enrolled in rural local educational agencies (as defined in this notice).

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award three additional points to applications that meet the competitive preference priority.

The priority is:

Competitive Preference Priority—Supporting Novice i3 Applicants (0 or 3 points).

Eligible applicants that have never directly received a grant under this program.

Definitions:

The definition of "authentic STEM experiences" is from the Supplemental Priorities. The definitions of "large sample," "logic model," "moderate evidence of effectiveness," "multi-site sample," "national level," "quasi-experimental design study," "randomized controlled trial," "regional level," "relevant outcome," and "What Works Clearinghouse (WWC) Evidence Standards" are from 34 CFR 77.1. All other definitions are from the 2013 i3 NFP. We may apply these definitions in any year in which this program is in effect.

Authentic STEM experiences means laboratory, research-based, or experiential learning opportunities in a STEM (science, technology, engineering, and mathematics) subject in informal or formal settings.

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an i3 grant jointly with an eligible nonprofit organization.

High-minority school is defined by a school's LEA in a manner consistent with the corresponding State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the ESEA. The applicant must provide, in its i3 application, the definition(s) used.

High-need student means a student at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under title I of the ESEA.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a process, product, strategy, or practice and are implementing it.

Innovation means a process, product, strategy, or practice that improves (or is expected to improve) significantly upon the outcomes reached with status quo options and that can ultimately reach widespread effective usage.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units).

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Moderate evidence of effectiveness means that (i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (as defined in this notice) (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice. (ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (as defined in this notice) (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample (as defined in this notice) and a multi-site sample (as defined in this notice). (Note: Multiple studies can cumulatively meet the large and multisite sample requirements as long as each study meets the other requirements in this paragraph).

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State.

National level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Regional level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (*e.g.*, economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy or practice is designed to improve; consistent with the specific goals of a program.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title VI, part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Student achievement means—

(a) For grades and subjects in which assessments are required under ESEA section 1111(b)(3): (1) A student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b), provided they are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under ESEA section 1111(b)(3): Alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. An applicant may also include other measures that are rigorous and comparable across classrooms.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: ARRA, Division A, Section 14007, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2013 i3 NFP. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements or discretionary grants.

Estimated Available Funds: $103,100,000.

These estimated available funds are the total available for all three types of grants under the i3 program (Development, Validation, and Scale-up grants). Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 or later years from the list of unfunded applications from this competition.

Estimated Range of Awards:

Development grants: Up to $3,000,000.

Validation grants: Up to $12,000,000.

Scale-up grants: Up to $20,000,000.

Note: The upper limit of the range of awards (*e.g.*, $12,000,000 for Validation grants) is referred to as the "maximum amount of awards" under Other in section III of this notice.

Estimated Average Size of Awards:

Development grants: $3,000,000.

Validation grants: $11,500,000.

Scale-up grants: $19,000,000.

Estimated Number of Awards:

Development grants: 9–11 awards.

Validation grants: 2–3 awards.

Scale-up grants: 0–2 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Innovations that Improve Achievement for High-Need Students:* All grantees must implement practices that are designed to improve student achievement (as defined in this notice) or student growth (as defined in this notice), close achievement gaps, decrease dropout rates, increase high school graduation rates (as defined in this notice), or increase college enrollment and completion rates for high-need students (as defined in this notice).

2. *Innovations that Serve Kindergarten-through-Grade-12 (K–12) Students:* All grantees must implement practices that serve students who are in grades K–12 at some point during the funding period. To meet this requirement, projects that serve early learners (*i.e.*, infants, toddlers, or preschoolers) must provide services or supports that extend into kindergarten or later years, and projects that serve postsecondary students must provide services or supports during the secondary grades or earlier.

3. *Eligible Applicants:* Entities eligible to apply for i3 grants include either of the following:

(a) An LEA.

(b) A partnership between a nonprofit organization and—

(1) One or more LEAs; or

(2) A consortium of schools.

Statutory Eligibility Requirements: Except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows, to be eligible for an award, an eligible applicant must—

(a)(1) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(2) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(b) Have made significant improvements in other areas, such as high school graduation rates (as defined in this notice) or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(c) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that organizations in the private sector will provide matching funds in order to help bring results to scale; and

(d) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them.

Note: An entity submitting an application should provide, in Appendix C, under "Other Attachments Form," of its application, information addressing the eligibility requirements described in this section. An applicant must provide, in its application, sufficient supporting data or other information to allow the Department to determine whether the applicant has met the eligibility requirements. Note that, to address the statutory eligibility requirements in paragraphs (a)(1) or (2), and (b), applicants must provide data that demonstrate a change due to the work of the applicant with an LEA or schools. In other words, applicants must provide data for at least two definitive points in time when addressing this requirement in Appendix C of their applications. For further guidance, please refer to the definition of "student achievement" in this notice, and the question and answer Webinar for FY 2016 i3 Scale-up and Validation Applications. Additionally, information on the statutory eligibility requirements can be found on the i3 Web site at *http://innovation.ed.gov/what-we-do/innovation/investing-in-innovation-i3/*. If the Department determines that an applicant provided insufficient information in its application, the applicant will not have an opportunity to provide additional information.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute specifies that an eligible applicant that includes a nonprofit organization meets the requirements in paragraphs (a) and (b) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its i3 grant an LEA or a consortium of schools that meets the requirements in paragraphs (a) and (b) of the eligibility requirements in this notice.

In addition, the authorizing statute specifies that an eligible applicant that includes a nonprofit organization meets the requirements of paragraph (c) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement for private-sector matching.

4. *Cost Sharing or Matching:* To be eligible for an award, an applicant must demonstrate that one or more private-sector organizations, which may include philanthropic organizations, will provide matching funds in order to help bring project results to scale. An eligible Validation applicant must obtain matching funds, or in-kind donations, equal to at least 10 percent of its Federal grant award. The highest-rated eligible applicants must submit evidence of 50 percent of the required private-sector matching funds following the peer review of applications. A Federal i3 award will not be made unless the applicant provides adequate evidence that the 50 percent of the required private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement. An applicant must provide evidence of the remaining 50 percent of required private-sector match three months after the project start date.

The Secretary may consider decreasing the matching requirement on a case-by-case basis, and only in the most exceptional circumstances. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request that the Secretary reduce the matching-level requirement, along with a statement of the basis for the request.

Note: An applicant that does not provide a request for a reduction of the matching-level requirement in its application may not submit that request at a later time.

5. *Other:* The Secretary establishes the following requirements for the i3 program. These requirements are from the 2013 i3 NFP. We may apply these requirements in any year in which this program is in effect.

- *Evidence Standards:* To be eligible for an award, an application for a Validation grant must be supported by moderate evidence of effectiveness (as defined in this notice).

Note: An applicant should identify up to two study citations to be reviewed against What Works Clearinghouse Evidence Standards for the purposes of meeting the i3 evidence standard requirement. An applicant should clearly identify these citations in Appendix D, under the "Other Attachments Form," of its application. The Department will not review a study citation that an applicant fails to clearly identify for review. In addition to the two study citations, applicants should include a description of the intervention(s) the applicant plans to implement and the intended student outcomes that the intervention(s) attempts to impact in Appendix D.

An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available; or, in the full application, include copies of evidence in Appendix D. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time. However, if the WWC determines that a study does not provide enough information on key aspects of the study design, such as sample attrition or equivalence of intervention and comparison groups, the WWC will submit a query to the study author(s) to gather information for use in determining a study rating.

Authors are asked to respond to queries within ten business days. Should the author query remain incomplete within 14 days of the initial contact to the study author(s), the study will be deemed ineligible under the grant competition. After the grant competition closes, the WWC will continue to include responses to author queries and will make updates to study reviews as necessary. However, the competition can only take into account information that is available at the time the competition is open.

Note: The evidence standards apply to the prior research that supports the effectiveness of the proposed project. The i3 program does not restrict the source of prior research providing evidence for the proposed project. As such, an applicant could cite prior research in Appendix D for studies that were conducted by another entity (*i.e.*, an entity that is not the applicant) so long as the prior research studies cited in the application are relevant to the effectiveness of the proposed project.

- *Funding Categories:* An applicant will be considered for an award only for the type of i3 grant (*i.e.*, Development, Validation, or Scale-up grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.
- *Limit on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) in any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) no grantee may receive in a single year new i3 grant awards that total an amount greater than the sum of the maximum amount of funds for a Scale-up grant and the maximum amount of funds for a Development grant for that year. For example, in a year when the maximum award value for a Scale-up grant is $20 million and the maximum award value for a Development grant is $3 million, no grantee may receive in a single year new grants totaling more than $23 million.
- *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant and, if funded, as the grantee, may make subgrants to one or more entities in the partnership.
- *Evaluation:* The grantee must conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the i3-supported practice (as implemented at the proposed level of scale) on a relevant outcome (as defined in this notice). The grantee must make broadly available digitally and free of charge, through formal (*e.g.*, peer-reviewed journals) or informal (*e.g.*, newsletters) mechanisms, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure that the data from its evaluation are made available to third-party researchers consistent with applicable privacy requirements.

In addition, the grantee and its independent evaluator must agree to cooperate with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department, within 100 days of a grant award, an updated comprehensive evaluation plan in a format and using such tools as the Department may require. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation. All of these updates must be consistent with the scope and objectives of the approved application.

- *Communities of Practice:* Grantees must participate in, organize, or facilitate, as appropriate, communities of practice for the i3 program. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them.
- *Management Plan:* Within 100 days of a grant award, the grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://innovation.ed.gov/what-we-do/innovation/investing-in-innovation-i3/*. To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.411B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Deadline for Notice of Intent to Submit Application: June 6, 2016.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) the absolute priority the applicant intends to address. Applicants may access this form online at *https://www.surveymonkey.com/r/K9ZVJDS*. Applicants that do not complete this form may still submit an application.

Page Limit: The application narrative (part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative for a Validation grant application to no more than 35 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that they were unable to include within the page limits for the narrative. Applicants should use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles,

headings, footnotes, quotations, references, and captions.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit for the application does not apply to part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support of the application. However, the page limit does apply to all of the application narrative section of the application.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the i3 program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Consistent with the process followed in the prior i3 competitions, we plan on posting the project narrative section of funded i3 applications on the Department's Web site. Accordingly, you may wish to request confidentiality of business information. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: May 18, 2016.

Deadline for Notice of Intent to Submit Applications: June 6, 2016.

Informational Meetings: The i3 program intends to hold Webinars designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these meetings will be provided on the i3 Web site at *http://innovation.ed.gov/what-we-do/innovation/investing-in-innovation-i3/*.

Deadline for Transmittal of Applications: July 15, 2016.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 13, 2016.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform*. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:* Applications for grants for the i3 program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the i3 program, CFDA number 84.411B (Validation grants), must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the i3 program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.411, not 84.411B).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov,* the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov,* it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202. FAX: (202) 401–4123.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411B), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the Validation competition are from the 2013 i3 NFP and 34 CFR 75.210, and are listed below.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria for the application.

A. *Significance (up to 15 points).*

In determining the significance of the project, the Secretary considers the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project. (34 CFR 75.210)

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (34 CFR 75.210)

(3) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (34 CFR 75.210)

B. *Strategy to Scale (up to 30 points).*

In determining the applicant's capacity to scale the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy or practice that will enable the applicant to reach the level of scale that is proposed in the application. (34 CFR 75.210)

(2) The extent to which the applicant will use grant funds to address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale proposed in the application. (2013 i3 NFP)

(3) The feasibility of successful replication of the proposed project, if favorable results are obtained, in a variety of settings and with a variety of populations. (34 CFR 75.210)

C. *Quality of the Project Design and Management Plan (up to 35 points).*

In determining the quality of the proposed project design, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (34 CFR 75.210)

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210)

(3) The clarity and coherence of the applicant's multi-year financial and operating model and accompanying plan to operate the project at a national or regional level (as defined in this notice) during the project period. (2013 i3 NFP)

(4) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (34 CFR 75.210)

D. *Quality of the Project Evaluation (up to 20 points).*

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations. (34 CFR 75.210)

(2) The clarity and importance of the key questions to be addressed by the project evaluation, and the appropriateness of the methods for how each question will be addressed. (2013 i3 NFP)

(3) The extent to which the evaluation will study the project at the proposed level of scale, including, where appropriate, generating information about potential differential effectiveness of the project in diverse settings and for diverse student population groups. (2013 i3 NFP)

(4) The extent to which the evaluation plan includes a clear and credible analysis plan, including a proposed sample size and minimum detectable effect size that aligns with the expected project impact, and an analytic approach for addressing the research questions. (2013 i3 NFP)

(5) The extent to which the evaluation plan clearly articulates the key components and outcomes of the project, as well as a measurable threshold for acceptable implementation. (2013 i3 NFP)

(6) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2013 i3 NFP)

Note: Applicants may wish to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/*. In addition, applicants may view two optional Webinar recordings that were hosted by the Institute of Education Sciences. The first Webinar discussed strategies for designing and executing well-designed quasi-experimental design studies and is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=23*. The second Webinar focused on more rigorous evaluation designs and discussed strategies for designing and executing studies that meet WWC evidence standards without reservations. This Webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18*.

2. *Review and Selection Process:* Before making awards, we will screen applications submitted in accordance with the requirements in this notice to determine whether applications have met eligibility and other requirements. This screening process may occur at various stages of the process; applicants that are determined to be ineligible will not receive a grant, regardless of peer reviewer scores or comments.

For the application review process, we will use independent peer reviewers with varied backgrounds and professions including pre-kindergarten-grade 12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. All reviewers will be thoroughly screened for conflicts of interest to ensure a fair and competitive review process.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, using the selection criteria provided in this notice. For Validation grant applications, we intend to conduct a single tier review. If an eligible applicant addresses the competitive preference priority (Supporting Novice i3 Applicants), the Department will review its list of previous i3 grantees in scoring this competitive preference priority.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The overall purpose of the i3 program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the i3 Validation grants.

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Validation grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W312, Washington, DC 20202. Telephone: (202) 453–7122. FAX: (202) 401–4123 or by email: *i3@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to either program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 11, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–11522 Filed 5–13–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–117–000.
Applicants: Northern States Power Company, a Wisconsin Corporation.
Description: Application of Northern States Power Company, a Wisconsin corporation for Authorization under FPA Section 203 to Acquire Jurisdictional Assets.
Filed Date: 5/10/16.
Accession Number: 20160510–5106.
Comments Due: 5 p.m. ET 5/31/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–78–010.
Applicants: UNS Electric, Inc.
Description: Compliance filing: Attachment K Compliance Filing to be effective 10/1/2015.
Filed Date: 5/10/16.
Accession Number: 20160510–5113.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER13–415–003.
Applicants: Anahau Energy, LLC.
Description: Supplement to December 31, 2015 Triennial market power update of Anahau Energy, LLC for SPP region.
Filed Date: 5/10/16.
Accession Number: 20160510–5105.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1398–002.
Applicants: Provision Power & Gas, LLC.
Description: Tariff Amendment: Market-Based Rates Tariff to be effective 5/1/2016.
Filed Date: 5/10/16.
Accession Number: 20160510–5098.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1411–001.
Applicants: CNR Energy LLC.
Description: Tariff Amendment: Amendment of CNR Energy LLC Baseline MBR Filing to be effective 7/1/2016.
Filed Date: 5/10/16.
Accession Number: 20160510–5085.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1652–000.
Applicants: LifeEnergy LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 5/10/2016.
Filed Date: 5/9/16.
Accession Number: 20160509–5166.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1654–000.
Applicants: Balance Power Systems, LLC.

Description: Notice of cancellation of market based tariff of Balance Power Systems, LLC.

Filed Date: 5/10/16.

Accession Number: 20160510–5100.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1655–000.

Applicants: PacifiCorp.

Description: Section 205(d) Rate Filing: WAPA Non-Conforming SGIA ? Olmsted Hydro to be effective 5/3/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5108.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1656–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2016–05–10_SA 2918 GRE–NSPM Paynesville-Hawick T–TIA to be effective 5/11/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5119.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1657–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: SGIA and LGIA with AES Tehachapi Wind, LLC to be effective 5/1/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5127.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1658–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: 2016 Revised Added Facilities Rate under TO—Filing No. 4 to be effective 7/10/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5129.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1659–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original Interim ISA No. 4455, Queue No. AA1–038 to be effective 4/14/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5137.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1660–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Initial rate filing: Van Tyle Transmission Facilities Agreement to be effective 5/5/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5147.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1661–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Initial rate filing: Van Tyle Transmission Facilities Agreement to be effective 5/5/2016.

Filed Date: 5/10/16.

Accession Number: 20160510–5159.

Comments Due: 5 p.m. ET 5/31/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11519 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–116–000.

Applicants: Weyerhaeuser NR Company, International Paper Company.

Description: Application of Weyerhaeuser NR Company, et al. under Section 203 for Disposition and Consolidation of Jurisdictional Facilities, et al.

Filed Date: 5/6/16.

Accession Number: 20160506–5255.

Comments Due: 5 p.m. ET 5/27/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–97–000.

Applicants: River Bend Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of River Bend Solar, LLC.

Filed Date: 5/9/16.

Accession Number: 20160509–5121.

Comments Due: 5 p.m. ET 5/31/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1355–004.

Applicants: Southern California Edison Company.

Description: Amendment to December 17, 2015 Market-Based Rate Triennial Filing for Southwest Region of Southern California Edison Company.

Filed Date: 5/6/16.

Accession Number: 20160506–5250.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER10–3232–006; ER14–2871–009; ER16–182–004; ER10–3244–011; ER10–3251–009; ER14–2382–009; ER15–621–008; ER11–2639–009; ER15–622–008; ER15–463–008; ER16–72–004; ER15–110–008; ER13–1586–010; ER10–1992–016.

Applicants: Wheelabrator Shasta Energy Company Inc., Cameron Ridge, LLC, Cameron Ridge II, LLC, Coso Geothermal Power Holdings, LLC, Oak Creek Wind Power, LLC, ON Wind Energy LLC, Pacific Crest Power, LLC, Ridge Crest Wind Partners, LLC, Ridgetop Energy, LLC, San Gorgonio Westwinds II, LLC, San Gorgonio Westwinds II—Windustries, Terra-Gen Energy Services, LLC, TGP Energy Management, LLC, Victory Garden Phase IV, LLC.

Description: Notice of Change in Status of the ECP MBR Sellers, et al.

Filed Date: 5/6/16.

Accession Number: 20160506–5260.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1643–000.

Applicants: Southern California Edison Company.

Description: Notice of Cancellation of Southern California Edison Company Rate Schedule No. 282.

Filed Date: 5/6/16.

Accession Number: 20160506–5253.

Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1644–000.

Applicants: TPF Generation Holdings, LLC.

Description: § 205(d) Rate Filing: Normal 2016 to be effective 5/10/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5101.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1645–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Initial rate filing: Van Tyle Transmission Station Interconnection Facilities Agreement to be effective 5/5/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5102.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1646–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: BPA General Transfer Agreement (West) Rev 6 to be effective 1/1/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5126.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1647–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 2016 Revised Added Facilities Rate WDAT—Filing No. 12 to be effective 7/9/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5134.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1648–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 2016 Revised Added Facilities Rate under TO—Filing No. 3 to be effective 1/1/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5135.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1649–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2016–05–09 Aliso Canyon Tariff Amendment to Enhance Gas-Electric Coordination to be effective 6/2/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5152.

Comments Due: 5 p.m. ET 5/16/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11530 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1610–000]

V3 Commodities Group, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of V3 Commodities Group, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 24, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11524 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–101–000.

Applicants: White Pine Solar, LLC, White Oak Solar, LLC.

Description: Revisions to April 13, 2016 Application for Authorization Under Section 203 of the Federal Power Act and Request for Shortened Comment Period of White Pine Solar, LLC, et al.

Filed Date: 5/5/16.

Accession Number: 20160505–5273.

Comments Due: 5 p.m. ET 5/16/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1586–005; ER12–2511–008; ER10–1596–004; ER11–1936–004; ER10–1630–005.

Applicants: Big Sandy Peaker Plant, LLC, C.P. Crane LLC, High Desert Power Project, LLC, TPF Generation Holdings, LLC, Wolf Hills Energy, LLC.

Description: Notification of Change in Status of Big Sandy Peaker Plant, LLC, et al.

Filed Date: 5/9/16.

Accession Number: 20160509–5204.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER10–2881–024; ER10–2641–024; ER10–2663–024; ER10–2882–024; ER10–2883–024; ER10–2884–024; ER10–2885–024; ER10–2886–024; ER13–1101–019; ER13–1541–018; ER14–661–010; ER14–787–012; ER15–54–004; ER15–55–004; ER15–647–002; ER15–1475–005; ER15–2191–001; ER15–2593–004; ER16–452–004; ER16–705–002; ER16–706–002.

Applicants: Alabama Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, SG2 Imperial Valley LLC, Macho Springs Solar, LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, Kay Wind, LLC, North Star Solar, LLC, Grant Wind, LLC, Desert Stateline LLC, RE Tranquillity LLC, RE Garland LLC, RE Garland A LLC.

Description: Notification of Non-Material of Change in Status of Oleander Power Project, Limited Partnership, et al.

Filed Date: 5/9/16.

Accession Number: 20160509–5212.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1437–000.

Applicants: 62SK 8ME LLC.

Description: Request of 62SK 8ME LLC to accept tariff filings with effective date of June 1, 2016, et al.

Filed Date: 5/6/16.

Accession Number: 20160506–5265.

Comments Due: 5 p.m. ET 5/16/16.

Docket Numbers: ER16–1438–000.

Applicants: 63SU 8ME LLC.

Description: Request of 62SK 8ME LLC to accept tariff filings with effective date of June 1, 2016, et al.

Filed Date: 5/6/16.

Accession Number: 20160506–5265.

Comments Due: 5 p.m. ET 5/16/16.

Docket Numbers: ER16–1439–000.

Applicants: 63SU 8ME LLC.

Description: Request of 62SK 8ME LLC to accept tariff filings with effective date of June 1, 2016, et al.

Filed Date: 5/6/16.

Accession Number: 20160506–5265.

Comments Due: 5 p.m. ET 5/16/16.

Docket Numbers: ER16–1650–000.

Applicants: Public Service Company of Colorado.

Description: Section 205(d) Rate Filing: 20160509_Losses Settlement Filing to be effective 1/1/2014.

Filed Date: 5/9/16.

Accession Number: 20160509–5161.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1651–000.

Applicants: Public Service Company of Colorado.

Description: Section 205(d) Rate Filing: 20160509_Losses Settlement Filing ER15–266 to be effective 4/16/2016.

Filed Date: 5/9/16.

Accession Number: 20160509–5163.

Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1653–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to WMPA SA No. 3082, Queue No. W2–082 to be effective 4/30/2014.

Filed Date: 5/10/16.

Accession Number: 20160510–5039.

Comments Due: 5 p.m. ET 5/31/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–783–000.

Applicants: Energy Partners I, LLC.

Description: Diagram(s) for Form 556 Line 10b of Energy Partners I, LLC under QF16–783.

Filed Date: 5/9/16.

Accession Number: 20160509–5172.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11518 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–67–000]

Oklahoma Municipal Power Authority; Notice of Request for Partial Waiver

Take notice that on May 6, 2016, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] Oklahoma Municipal Power Authority on behalf of itself and its Authorizing Member Municipal Cities, filed a request for partial waiver of the Public Utility Regulatory Policies Act of 1978 obligations of Electric Utilities to purchase and sell energy and capacity from and to Qualifying Facilities, all as more fully explained in the request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on May 27, 2016.

Dated: May 9, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11436 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–103–000.

Applicants: Copper Mountain Solar 4, LLC, Mesquite Solar 2, LLC, Mesquite Solar 3, LLC.

Description: Errata to April 15, 2016 Application for Authorization of Transaction Pursuant to FPA Section 203 of Copper Mountain Solar 4, LLC, et al.

Filed Date: 5/6/16.

Accession Number: 20160506–5229.

Comments Due: 5 p.m. ET 5/16/16.

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[1] 18 CFR 292.402.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–93–000.
Applicants: Rio Bravo Solar I, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rio Bravo Solar I, LLC.
Filed Date: 5/6/16.
Accession Number: 20160506–5210.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: EG16–94–000.
Applicants: Rio Bravo Solar II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rio Bravo Solar II, LLC.
Filed Date: 5/6/16.
Accession Number: 20160506–5213.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: EG16–95–000.
Applicants: Wildwood Solar II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wildwood Solar II, LLC.
Filed Date: 5/6/16.
Accession Number: 20160506–5214.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: EG16–96–000.
Applicants: Marshall Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Marshall Solar, LLC.
Filed Date: 5/9/16.
Accession Number: 20160509–5058.
Comments Due: 5 p.m. ET 5/31/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–203–000; ER14–268–000.
Applicants: Southern Company Services, Inc., Alabama Power Company.
Description: Notice of Delay Until June 1, 2016 of True-Up Filings under Southern Companies' OATT and Request for Waiver of Southern Company Services, Inc., et al.
Filed Date: 4/29/16.
Accession Number: 20160429–5577.
Comments Due: 5 p.m. ET 5/16/16.

Docket Numbers: ER13–432–004.
Applicants: Entergy Services, Inc.
Description: Errata to May 3, 2016 Compliance Filing of Entergy Services, Inc. Pursuant to Opinion No. 547.
Filed Date: 5/6/16.
Accession Number: 20160506–5231.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1371–001.
Applicants: 63SU 8ME LLC.
Description: Tariff Amendment: Amendment to 1 to be effective 6/7/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5183.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1603–000.
Applicants: San Diego Gas & Electric Company.
Description: Filing Withdrawal: Withdrawal of Depreciation Rate Filing under ER16–1603 to be effective N/A.
Filed Date: 5/6/16.
Accession Number: 20160506–5150.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1639–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 285 to be effective 7/7/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5184.
Comments Due: 5 p.m. ET 5/27/16.

Docket Numbers: ER16–1640–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3417, Queue No. W3–159 to be effective 5/5/2016.
Filed Date: 5/9/16.
Accession Number: 20160509–5062.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1641–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–05–09_SA 2916 Prairie Power-Prairie Power 1st Rev GIA (J291) to be effective 5/10/2016.
Filed Date: 5/9/16.
Accession Number: 20160509–5081.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1642–000.
Applicants: San Diego Gas & Electric Company.
Description: Initial rate filing: Certificate of Concurrence in Large Generator Interconnection Agreement to be effective 6/1/2016.
Filed Date: 5/9/16.
Accession Number: 20160509–5084.
Comments Due: 5 p.m. ET 5/31/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–11529 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–17–000]

Millennium Pipeline Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Valley Lateral Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Environmental Assessment (EA) of the Valley Lateral Project (Project) proposed by Millennium Pipeline Company, L.L.C. (Millennium) in the above-referenced docket. Millennium requests authorization to construct, operate, and maintain new natural gas facilities consisting of 7.9 miles of new, 16-inch-diameter natural gas pipeline extending from Millennium's existing mainline to the CPV Valley, LLC (CPV) Valley Energy Center in Orange County, New York. The Project would provide transportation capacity for 130,000 dekatherms per day (130 million cubic feet) of natural gas to serve the new 650 megawatt gas-powered CPV Valley Energy Center.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the National Environmental Policy Act of 1969. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Environmental Protection Agency and New York State Department of Agriculture and Markets participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link.

A limited number of copies of the EA are also available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC, on or before June 8, 2016.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP16–17–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 Code of Federal Regulations 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP16–17). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 1–202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11526 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3417–011; ER10–2895–015; ER14–1964–006; ER16–287–001; ER13–2143–008; ER10–3167–007; ER13–203–007; ER11–2292–015; ER11–3942–014; ER11–2293–015; ER10–2917–015; ER11–2294–014; ER12–2447–013; ER13–1613–008; ER10–2918–016; ER10–2920–015; ER11–3941–013; ER10–2921–015; ER10–2922–015; ER13–1346–007; ER10–2966–015; ER11–2383–010; ER10–3178–008.

Applicants: Alta Wind VIII, LLC, Bear Swamp Power Company LLC, BIF II Safe Harbor Holdings, LLC, BIF III Holtwood LLC, Black Bear Development Holdings, LLC, Black Bear Hydro Partners, LLC, Black Bear SO, LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Smoky Mountain Hydropower LLC, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Mesa Wind Power Corporation, Rumford Falls Hydro LLC, Safe Harbor Water Power Corporation, Windstar Energy, LLC.

Description: Notice of Change in Status of the Brookfield Companies, et al.

Filed Date: 5/2/16.

Accession Number: 20160502–5491.

Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: ER10–2348–007.

Applicants: High Lonesome Mesa, LLC.

Description: Notification of Change in Status of High Lonesome Mesa, LLC.

Filed Date: 5/2/16.

Accession Number: 20160502–5496.

Comments Due: 5 p.m. ET 5/23/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11517 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7024–001]

Falck, David P.; Notice of Filing

Take notice that on May 5, 2016, David P. Falck submitted for filing, supplemental application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 26, 2016.

Dated: May 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11528 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

Enterprise Solar, LLC	EG16–42–000
Escalante Solar I, LLC	EG16–43–000
Escalante Solar II, LLC	EG16–44–000
Escalante Solar III, LLC	EG16–45–000
Granite Mountain Solar East, LLC.	EG16–46–000
Granite Mountain Solar West, LLC.	EG16–47–000
Iron Springs Solar, LLC	EG16–48–000
Seward Generation, LLC	EG16–49–000
Summer Solar LLC	EG16–50–000
Ringer Hill Wind, LLC	EG16–51–000
South Plains Wind Energy II, LLC.	EG16–52–000
Comanche Solar PV, LLC	EG16–53–000
Solar Star California XLI, LLC	EG16–54–000
Grant County Interconnect, LLC	EG16–55–000
Red Horse III, LLC	EG16–56–000
62SK 8ME LLC	EG16–57–000
Middlesex Energy Center, LLC	EG16–58–000
San Roman Wind I, LLC	EG16–59–000
East Ridge Transmission, LLC	EG16–60–000
Black Hills Colorado IPP, LLC	EG16–61–000

Take notice that during the month of April 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: May 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11527 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–930–000.
Applicants: Enable Mississippi River Transmission, L.
Description: Section 4(d) Rate Filing: Negotiated Rate Filing to Amend LER 5680's Attachment A_5_5_16 to be effective 5/5/2016.
Filed Date: 5/5/16.
Accession Number: 20160505–5154.
Comments Due: 5 p.m. ET 5/17/16.

Docket Numbers: RP16–931–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) Rate Filing: Housekeeping Matters to be effective 6/6/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5042.
Comments Due: 5 p.m. ET 5/18/16.

Docket Numbers: RP16–932–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Section 4(d) Rate Filing: OGT May 2016 Cleanup Filing to be effective 6/6/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5057.
Comments Due: 5 p.m. ET 5/18/16.

Docket Numbers: RP16–933–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Section 4(d) Rate Filing: DCP—May 6, 2016 Administrative Changes to be effective 6/6/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5163.
Comments Due: 5 p.m. ET 5/18/16.

Docket Numbers: RP16–934–000.
Applicants: Dominion Transmission, Inc.
Description: Section 4(d) Rate Filing: DTI—May 6, 2016 Administrative Changes to be effective 6/6/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5170.
Comments Due: 5 p.m. ET 5/18/16.

Docket Numbers: RP16–935–000.
Applicants: Dominion Transmission, Inc.
Description: Section 4(d) Rate Filing: DTI—May 6, 2016 Negotiated Rate Agreements to be effective 6/1/2016.
Filed Date: 5/6/16.
Accession Number: 20160506–5173.
Comments Due: 5 p.m. ET 5/18/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–929–001.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Tariff Amendment: Amendment to RP16–929–000 Filing to be effective 6/5/2016.

Filed Date: 5/6/16.

Accession Number: 20160506–5149.

Comments Due: 5 p.m. ET 5/18/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11521 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–51–000.

Applicants: DCP Guadalupe Pipeline, LLC.

Description: Tariff filing per 284.123(b)(2) + (g): DCP Guadalupe Pipeline, LLC Rate Case to be effective 5/1/2016.

Filed Date: 4/29/2016.

Accession Number: 201604295434 *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*

Comments Due: 5 p.m. ET 5/20/16.

284.123(g) Protests Due: 5 p.m. ET 6/28//16.

Docket Numbers: RP16–929–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Section 4(d) Rate Filing: MN365 & MNLFT FOSA Interim Capacity Language to be effective 6/2/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5089.

Comments Due: 5 p.m. ET 5/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11520 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1609–000]

ID SOLAR 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ID SOLAR 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 24, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11523 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1276–006; ER10–1292–005; ER10–1287–005; ER10–1303–005; ER10–1319–007; ER10–1353–007.

Applicants: Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generation Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, LLC, Dearborn Industrial Generation, L.L.C.

Description: Notice of Non-Material Change in Status of Consumer Energy Company, et. al.

Filed Date: 5/2/16.

Accession Number: 20160502–5474.

Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: ER10–1285–007.

Applicants: Consumers Energy Company.

Description: Notice of Non-Material Change in Status of Craven County Wood Energy Limited Partnership.

Filed Date: 5/2/16.

Accession Number: 20160502–5476.

Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: ER16–1616–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Orcas NITSA S.A. No 792 and Orcas NOA S.A No 793 to be effective 5/1/2016.

Filed Date: 5/3/16.

Accession Number: 20160503–5124.

Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: ER16–1617–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3445, Queue No. X1–073 due to Breach to be effective 5/3/2016.

Filed Date: 5/3/16.

Accession Number: 20160503–5142.

Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: ER16–1618–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2953 Cottonwood Wind Project, LLC GIA Cancellation to be effective 4/13/2016.

Filed Date: 5/4/16.

Accession Number: 20160504–5032.

Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: ER16–1619–000.

Applicants: Maine Power Express, LLC.

Description: Application for Authority to sell transmission rights at negotiated rates of Maine Power Express, LLC.

Filed Date: 5/2/16.

Accession Number: 20160502–5464.

Comments Due: 5 p.m. ET 5/23/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11525 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–16–000]

Implementation Issues Under the Public Utility Regulatory Policies Act of 1978; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on February 9, 2016, the Federal Energy Regulatory Commission (Commission) will hold a technical conference on June 29, 2016, from 9:00 a.m. to approximately 4:00 p.m. on implementation issues under the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] The conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the technical conference is to focus on issues associated with the Commission's implementation of PURPA. As noted in the preliminary agenda previously issued in this proceeding,[2] the conference will focus on two issues: the mandatory purchase obligation under PURPA and the determination of avoided costs for those purchases.

An updated Agenda for the technical conference, including speakers, is attached.

Panelists are invited to submit written comments (10 page limit) in advance of this technical conference, no later than June 7, 2016. These statements will be available prior to the conference on the Commission's Web site. Panelists will have the opportunity to make opening remarks (3 minute limit) at the start of the respective panels.

Those who plan to attend the technical conference are strongly encouraged to complete the registration form located at: *https://www.ferc.gov/whats-new/registration/06-29-16-form.asp.* There is no registration deadline or fee to attend the conference.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting Company (202–347–3700). A free webcast of this event is also available through *www.ferc.gov.*

Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov* Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

While this conference is not for the purpose of discussing specific cases, we note that the discussions at the conference may address matters at issue in the following Commission proceedings that are either pending or within their rehearing period:

Occidental Chemical Corporation	Docket No. EL13–41–000
Occidental Chemical Corporation	Docket Nos. EL14–28–000 QF00–64–002
Tri-State Generation and Transmission Association, Inc.	Docket No. EL16–39–000
Bright Light Capital, LLC	Docket Nos. EL16–43–000 QF16–259–001
Nebraska Public Power District	Docket No. QM16–1–000
Ameren Illinois Company and Union Electric Company	Docket No. QM16–2–000
Gregory and Beverly Swecker v. Midland Power Cooperative	Docket Nos. EL14–9–000

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[1] 16 U.S.C. 824a–3 (2012).

[2] Supplemental Notice Concerning Technical Conference, 81 FR 12,726 (2016).

	QF11–424–002
Gregory and Beverly Swecker v. Midland Power Cooperative and Central Iowa Power Cooperative	Docket No. EL14–18–000
Interconnect Solar Development LLC	Docket Nos. EL16–55–000 QF11–204–002 QF11–205–002
SunE B9 Holdings, LLC	Docket Nos. EL16–58–000 QF15–793–001 QF15–794–001 QF15–795–001
Golden Spread Electric Cooperative, Inc.	Docket No. QM16–3–000
Golden Spread Electric Cooperative, Inc.	Docket No. EL16–62–000
Oklahoma Municipal Power Authority	Docket No. EL16–67–000

For more information about the technical conference, please contact:

Technical Information, Adam Alvarez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6734, *Adam.Alvarez@ferc.gov.*

Legal Information, Loni Silva, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6233, *Loni.Silva@ferc.gov.*

Logistical Information, Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *Sarah.Mckinley@ferc.gov.*

Dated: May 9, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11435 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10934–000]

William B. Ruger, Jr.; Notice of Existing Licensee's Failure To File Notice of Intent To File a Subsequent License Application

By April 30, 2016, William B. Ruger, Jr., the existing licensee for the Sugar River II Project No. 10934 was required to file a notice of intent to file an application for a subsequent license. The existing license for Project No. 10934 expires on April 30, 2021.

The 200-kilowatt (kW) project is located on the Sugar River in Sullivan County, New Hampshire. No federal lands are affected.

The principal project works consist of: (1) A 44-foot-long, 10-foot-high concrete dam; (2) a 1.4-acre impoundment; (3) a rectangular intake; (4) a 650-foot-long, 7-foot diameter steel penstock; (5) a powerhouse containing one 200-kW turbine-generator unit; (6) a 75-foot-long transmission line; and (7) appurtenant facilities.

Pursuant to section 16.19(b) of the Commission's regulations, an existing licensee with a minor license or a license for a minor part of a hydroelectric project must file a notice of intent pursuant to section 16.6(b).

Pursuant to section 16.6(b) of the Commission's regulations, in order to notify the Commission whether or not a licensee intends to file an application for new license, the licensee must file with the Commission a letter that contains an unequivocal statement of the licensee's intention to file or not to file an application for a new license.

William B. Ruger, Jr. has not filed a notice of intent to file an application for a subsequent license for this project.

Pursuant to section 16.23(b) of the Commission's regulations, an existing licensee of a water power project that fails to file a notice of intent pursuant to section 16.6(b) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for subsequent license.

Pursuant to section 16.20 of the Commission's regulations, applications for subsequent license (except from the existing licensee which is prohibited from filing) must be filed with the Commission at least 24 months prior to the expiration of the existing license. Applications for license for this project must be filed by April 30, 2019. Questions concerning this notice should be directed to Steve Kartalia at (202) 502–6131 or *Stephen.Kartalia@ferc.gov.*

Dated: May 9, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11437 Filed 5–13–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9946–42–OW]

National Wetland Condition Assessment 2011 Final Report

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's report on the National Wetland Condition Assessment (NWCA) 2011. The NWCA describes the results of the nationwide probabilistic survey that was conducted in the spring and summer of 2011 by EPA and its state and tribal partners. The NWCA 2011 report includes information on how the survey was implemented, what the findings are on a national and ecoregional scale, and future actions.

FOR FURTHER INFORMATION CONTACT: Gregg Serenbetz, Office of Wetlands, Oceans and Watersheds, Office of Water (4502T), Washington, DC. Phone: 202–566–1253; email: *serenbetz.gregg@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

The *National Wetland Condition Assessment 2011: A Collaborative Survey of the Nation's Wetlands* is the first report to use a statistically-valid random design to assess the condition of the nation's wetlands. It is one of a series of National Aquatic Resource Surveys (NARS), a national-scale monitoring program designed to produce statistically-valid assessments that answer critical questions about the condition of waters in the United States.

The key goals of the NWCA are to: (1) Describe the ecological condition of the nation's wetlands and stressors commonly associated with poor condition; (2) collaborate with states and tribes in developing complementary monitoring tools, analytical approaches, and data management technology to aid wetland protection and restoration program, and (3) advance the science of wetland monitoring and assessment to support wetland management needs. Using a statistical survey design, 967 sites were selected at random to represent the condition of wetlands across the lower 48 states. Both tidal and nontidal wetlands were targeted for sampling.

The NWCA finds less than half of wetland area nationally (48%) is in good condition; 32% is in poor condition and the remaining 20% is in fair condition based on assessments of the plant community. Physical disturbances to wetlands and their surrounding habitat such as compacted soil, ditching, or removal of plants, are the most widespread problems across the country. Approximately a quarter of wetland area nationally has high stress levels for surface hardening, vegetation removal, and ditching. The report has undergone public, peer, state/tribal, and EPA review.

A. How can I get copies of the NWCA 2011 report and other related information?

You may view and download the final report from EPA's Web site at: *http://www.epa.gov/national-aquatic-resource-surveys/nwca.*

Dated: May 8, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–11508 Filed 5–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9945–56–ORD; Docket ID No. EPA–HQ–ORD–2013–0111]

Public Comment Draft for the Integrated Risk Information System (IRIS) Assessment of tert-Butyl Alcohol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the draft IRIS Toxicological Review of tert-Butyl Alcohol. The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD).

EPA is releasing this draft IRIS assessment for public comment and discussion during the June 29–30, 2016 IRIS Public Science Meeting. This draft assessment is not final, as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent Agency policy or views. EPA will consider all public comments submitted in response to this notice when revising this document.

DATES: The 60-day public comment period begins May 16, 2016, and ends July 15, 2016. Comments must be received on or before July 15, 2016.

ADDRESSES: The draft IRIS Toxicological Review of tert-Butyl Alcohol will be available via the Internet on IRIS' Recent Additions at *http://www.epa.gov/iris/iris-recent-additions* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2013–0111.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the draft IRIS assessment of tert-Butyl Alcohol, contact Dr. Janice Lee, NCEA; telephone: 919–541–9458; or email: *lee.janiceS@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS Program is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemicals found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities and decisions to protect public health. The IRIS database contains information on chemicals that can be used to support the first two steps (hazard identification and dose-response evaluation) of the human health risk assessment process. When supported by available data, IRIS provides health effects information and toxicity values for health effects (including cancer and effects other than cancer). Government and others combine IRIS toxicity values with exposure information to characterize public health risks of chemicals; this information is then used to support risk management decisions designed to protect public health.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0111, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0111. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index.

Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: May 3, 2016.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2016–11264 Filed 5–13–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 12–268; AU Docket No. 14–252; WT Docket No. 12–269; DA 16–453]

Initial Clearing Target of 126 Megahertz Set for the Broadcast Television Spectrum Incentive Auction; Bidding in the Clock Phase of the Reverse Auction (Auction 1001) Will Start on May 31, 2016

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Incentive Auction Task Force and Wireless Telecommunications Bureau announce the initial clearing target of 126 megahertz for the Broadcast Television Spectrum Incentive Auction and that the bidding in the clock phase of the reverse auction is scheduled to begin on May 31, 2016. This document also announces the mailing of Final Confidential Status Letters, the number of forward auction blocks, and details and dates regarding the availability of educational and informational materials and bidding for reverse auction applicants that are qualified to bid in the reverse auction clock phase.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For general auction questions, contact Linda Sanderson at (717) 338–2868. For reverse auction legal questions, contact Erin Griffith or Kathryn Hinton at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Incentive Auction Clearing Target Public Notice,* GN Docket No. 12–268, AU Docket No. 14–252, WT Docket No. 12–269, DA 16–453, released on April 29, 2016. The complete text of the *Incentive Auction Clearing Target Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* the Auction 1001 Web site at *http://www.fcc.gov/auctions/1001,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Incentive Auction Task Force (Task Force) and the Wireless Telecommunications Bureau (Bureau) announce the 126 megahertz initial spectrum clearing target that has been set by the Auction System's initial clearing target determination procedure and the associated band plan for the initial stage of the incentive auction, as well as the number of Category 1 and Category 2 generic license blocks in each Partial Economic Area (PEA) that will be offered in the initial stage during the forward auction (Auction 1002). The Task Force and Bureau also announce that they will send a confidential letter (the Final Confidential Status Letter) to inform each applicant that was permitted to make an initial commitment in the reverse auction (Auction 1001) of its status with respect to the clock phase of the reverse auction. Finally, the Task Force and Bureau provide details and specific dates regarding the availability of educational materials and the bidding in the clock phase of the reverse auction.

I. Initial Clearing Target and Band Plan

2. The Auction System's initial clearing target determination procedure has set an initial spectrum clearing target of 126 megahertz. Under the band plan associated with this spectrum clearing target, 100 megahertz, or 10 paired blocks, of licensed spectrum will be offered in the forward auction on a near-nationwide basis.

3. The generic license blocks offered in the initial stage during the forward auction under this band plan will consist of a total of 4030 "Category 1" blocks (zero to 15 percent impairment) and a total of 18 "Category 2" blocks (greater than 15 percent and up to 50 percent impairment). Approximately 97 percent of the blocks offered for the forward auction will be "Category 1" blocks, and 99 percent of the "Category 1" blocks will be zero percent impaired. Attached to the *Incentive Auction Clearing Target Public Notice* as Appendix A is a list indicating the number of "Category 1" and "Category 2" blocks available in each PEA.

4. The initial clearing target was determined by the procedure the Commission adopted in the *Auction 1000 Bidding Procedures Public Notice,* 80 FR 61917, October 14, 2015. Based on the initial commitments made by broadcast applicants seeking to bid in the clock phase of Auction 1001, the procedure identified a provisional assignment of eligible television stations to channels for each possible clearing target with the primary objective of minimizing impairments to forward auction licenses, consistent with the Commission's statutory obligation to make all reasonable efforts to preserve stations' populations served and coverage areas and its international arrangements with Canada and Mexico. The initial clearing target announced is the highest possible clearing target and associated band plan for which the provisional assignment satisfies the optimization objectives and the near-nationwide standard for impairments. If a subsequent stage is necessary, the clearing target determination procedure will be applied to select a new clearing target and corresponding band plan.

II. Final Confidential Status Letters for Reverse Auction Applicants

5. The Bureau will send to the contact person for each applicant that was permitted to make an initial commitment in Auction 1001 a Final Confidential Status Letter to inform the applicant of its status. The letter will notify the applicant, for each station included in the application, either that (1) the station is qualified to participate in the clock phase of the reverse auction; (2) the station is not qualified because no initial commitment was made for that station; (3) the station is not qualified because the commitment(s) made by the applicant for that station could not be accommodated; or (4) the station is not qualified because the Auction System determined that the station is not needed to meet the initial or any subsequent clearing target.

6. Applicants with one or more qualified stations will be deemed qualified bidders for the clock phase of Auction 1001 and will be automatically registered for the auction. The initial commitment is the station's unconditional, irrevocable offer to fulfill the terms of the commitment, which if accepted by the Commission, becomes a

binding obligation on the applicant. In determining the initial clearing target, the Auction System assigned each qualified station to an initial relinquishment option corresponding to an initial commitment made for the station. Qualified bidders will need to log in to the bidding system when it becomes available during the preview period to see the initial relinquishment option each qualified station is assigned to at the start of the clock phase of the reverse auction. They will also receive instructions with the Final Confidential Status Letter for participating in the mock auction and for placing bids in the clock phase of the reverse auction, using their previously received RSA SecurID® tokens.

7. Receipt of the registration mailing is critical to participating in both the mock auction and the clock phase of the reverse auction. Therefore, any applicant that has not received the Final Confidential Status Letter package by 12:00 noon Eastern Time (ET) on Wednesday, May 4, 2016, should contact the Auctions Hotline at (717) 338–2868. The contact person for each applicant is responsible for ensuring that each authorized bidder receives all of the information and materials.

8. If the Final Confidential Status Letter indicates that the Auction System has determined that a station is not qualified, the applicant will not be permitted to make any bids for that station in the reverse auction clock phase. Applicants without any qualified stations will not be deemed qualified bidders and will receive along with the Final Confidential Status Letter instructions for returning their RSA SecurID® tokens. The Task Force and Bureau remind all full power and Class A broadcast television licensees, including applicants that are not deemed qualified bidders, that they remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions until the completion of the forward auction as announced by the Commission by public notice. A party that is subject to the prohibition remains subject to the prohibition regardless of developments during the auction process. In addition, though communicating whether or not a party filed an application does not violate the rules, communicating that a party "is not bidding" in the auction could constitute an apparent violation that needs to be reported. In other words, an applicant that is not qualified to bid may nevertheless violate the prohibition by communicating its status to another covered party, regardless of the reason that it is not qualified.

III. Important Upcoming Events and Dates for Auction 1001

9. FCC Incentive Auction Reverse Auction Bidding System User Guide. The Task Force and Bureau will make available an "FCC Incentive Auction Reverse Auction Bidding System User Guide," which will describe the features of the Auction System that will be used to bid in the clock phase of the reverse auction. This user guide will be emailed to each authorized bidder on May 5, 2016. It will also be made available on the Commission's Auction 1001 Web page through a link in the "Education" section on May 5, 2016. Once posted, the user guide will remain available and accessible on the Auction 1001 Web page (*www.fcc.gov/auctions/1001*) for reference.

10. Online Bidding Tutorial. An online tutorial regarding bidding in the clock phase of the reverse auction will be available on May 18, 2016. The online tutorial will be accessible from the Auction 1001 Web page through a link in the "Education" section. Once posted, the tutorial will remain available and accessible on the Auction 1001 Web page for reference.

11. Bidding Preview Period. The Auction System will be available during a preview period that will open at 10:00 a.m. ET on May 23, 2016, and close at 6:00 p.m. ET on May 24, 2016. During this preview period, authorized bidders can log in and view the list of stations for which they may make bids in the clock phase, each station's bidding status, the initial relinquishment option assigned to the station, and, where applicable, available bid options with associated vacancy ranges and next round clock price offers.

12. Clock Phase Workshop. On May 24, 2016, from 10:00 a.m. ET to 1:00 p.m. ET, the Task Force, in conjunction with the Media and Wireless Telecommunications Bureaus (the Bureaus), will host a public workshop on the bidding system that will be used for bidding in the clock phase of Auction 1001. Details about the workshop and remote viewing will be released at a later date. After the event, a recording of the clock phase workshop will be accessible from the Auction 1001 Web page through a link in the "Education" section. Once posted, the clock phase workshop will remain available and accessible on the Auction 1001 Web page for reference.

13. Mock Auction and Mock Auction Preview Period. The Task Force and Bureaus will conduct one mock auction for all bidders qualified to bid in the clock phase of Auction 1001 beginning on May 25, 2016, and ending on May 26, 2016. The schedule of rounds for the mock auction is as follows. On May 25, 2016: Mock Bidding Round 1 (10:00 a.m.—12:00 p.m. ET) and Mock Bidding Round 2 (3:00 p.m.—5:00 p.m. ET). On May 26, 2016: Mock Bidding Round 3 (10:00 a.m.—11:00 a.m. ET); Mock Bidding Round 4 (1:00 p.m.—2:00 p.m. ET); and Mock Bidding Round 5 (4:00 p.m.—5:00 p.m. ET).

14. The mock auction will allow qualified bidders to become familiar with the clock phase bidding system and to ask Commission auction and technical support staff questions about the system and auction conduct. The Auction System will provide each bidder with a number and variety of stations for the mock auction similar to what the bidder will have during the actual clock phase of the reverse auction. The station(s) assigned to a bidder in the mock auction will be hypothetical, rather than the bidder's actual station(s) that it is qualified to bid for in the clock phase of the reverse auction, and the price offers that bidders see in the mock auction will not be the same as the actual price offers they see in the reverse auction itself. The mock auction will simulate the start of the auction, and each bidder will be allowed to submit bids for the stations shown. If a bidder does not make bids for a station, the station will be eliminated from further bidding in the mock auction. A bidder should take advantage of the mock auction to practice taking actions it may wish to take during actual bidding in the clock phase of Auction 1001 and to further familiarize itself with the bidding software.

15. The Task Force and Bureaus will conduct the mock auction over the Internet and provide the option of bidding by telephone. During a preview period that will open on the first day of the mock auction, May 25, 2016, at 9:00 a.m. ET and remain open until 10:00 a.m. ET, authorized bidders will be able to log in and view the list of stations for which they may make bids during the mock auction. A qualified bidder will be able to access the mock auction during the preview period at the link provided in the materials that accompany the Final Confidential Status Letter. That link will also be used to bid in the mock auction. The Task Force and Bureaus strongly recommend that all qualified bidders participate in the mock auction.

16. Clocks Rounds Start Date and Round Schedule. Bidding in the clock phase of Auction 1001 will begin on May 31, 2016, on the following schedule: May 31, 2016: Bidding Round (10:00 a.m.–4:00 p.m. ET) and June 1, 2016: Bidding Round (10:00 a.m.–2:00

p.m. ET). Starting on June 2, 2016, and continuing until further notice, the schedule will be: Bidding Round (10:00 a.m.–12:00 p.m. ET) and Bidding Round (3:00 p.m.–5:00 p.m. ET). The Bureau may adjust the number and length of bidding rounds based upon its monitoring of the bidding and assessment of the reverse auction's progress. The Bureau will provide notice of any adjustments by announcement in the Auction System during the course of the auction.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2016–11432 Filed 5–13–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, May 19, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Draft Advisory Opinion 2016–04: Grand Trunk Western Railroad Co.—Illinois Railroad Co. Political Action Committee

Draft Final Rule and Explanation and Justification for Technical Amendments to 2015 CFR

Proposed Statement of Policy Regarding the Public Disclosure of Closed Enforcement Files

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2016–11636 Filed 5–12–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: May 19, 2016; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The first portion of the meeting will be held in Open Session; the second in Closed Session.

Matters To Be Considered

Open Session

1. Docket No. 16–06: Update of Existing and Addition of New User Fees

Closed Session

1. Staff Briefing on the COSCON/KL/YMUK/Hanjin/ELJSA Slot Allocation and Sailing Agreement, FMC Agreement No. 012300
2. Staff Briefing on West Coast MTO Discussion Agreement, FMC Agreement No 201143

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523 5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–11602 Filed 5–12–16; 4:15 pm]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Central Bancshares, Inc., Muscatine, Iowa;* to acquire 100 percent of the outstanding shares of Brimfield Bank, Brimfield, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *J&B Financial Holdings, Inc., Minneapolis;* to acquire 100 percent of 1st United Bank, Faribault, Minnesota.

Board of Governors of the Federal Reserve System, May 10, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11421 Filed 5–13–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 2016.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Patriot Financial Partners, GP, L.P., Patriot Financial Partners, L.P., Patriot Financial Partners Parallel, L.P., Patriot Financial Partners GP, LLC, Patriot*

Financial Manager LLP, Patriot Financial Manager, L.P., all of Philadelphia, Pennsylvania; W. Kirk Wycoff, Fort Washington, James J. Lynch, Lafayette Hill, and Ira M. Lubert, Philadelphia, all of Pennsylvania; to acquire 10 percent or more of Heritage Commerce Corp, San Jose, California, and thereby indirectly control Bank of Commerce, San Jose, California.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Orville A. Rehder 2nd Revocable Living Trust, with Orville A. Rehder as trustee, Jeffrey A. Rehder, and Steve C. Rehder, all of Hawarden, Iowa;* to join the Rehder Family Control Group (currently consisting of Orville A. Rehder and George J. Rehder, both of Hawarden, Iowa) and retain control of voting shares of First State Associates, Inc., Hawarden, Iowa, and thereby indirectly retain control of First State Bank, Hawarden, Iowa; Farmers State Bank, Marion, South Dakota; and Miner County Bank, Howard, South Dakota.

Board of Governors of the Federal Reserve System, May 10, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11422 Filed 5–13–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*) and Regulation LL (12 CFR part 238) or Regulation MM (12 CFR part 239) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is described in § 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or § 239.8 of Regulation MM (12 CFR 239.8). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10a(c)(4)(B) of HOLA (12. U.S.C. 1467a(c)(4)(B)).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Maple Leaf Financial, Inc.,* Newbury, Ohio; to engage in lending activities pursuant to section 238.53(b)(1) of Regulation LL.

Board of Governors of the Federal Reserve System, May 11, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11487 Filed 5–13–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Fayette Bancshares, Inc.,* La Grange, Texas; to become a bank holding company through the acquisition of 100 percent of Fayette Savings Bank, SSB, La Grange, Texas.

Board of Governors of the Federal Reserve System, May 11, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–11488 Filed 5–13–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086; Docket 2016–0001; Sequence 1]

General Services Administration Acquisition Regulation; Submission for OMB Review; Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217. The approval requested includes four versions of the GSA Form 1364; GSA Forms 1364, 1364A, 1364A–1, and 1364WH. These forms are used to obtain information for offer evaluation and lease award purposes regarding property being offered for lease to house Federal agencies. This includes financial aspects of offers for analysis and negotiation, such as real estate taxes, adjustments for vacant space, and offeror construction overhead fees. A notice was published in the **Federal Register** at 81 FR 10623 on March 1, 2016. No comments were received.

A total of six lease contract models have been developed to meet the needs of the national leased portfolio. Five of the lease models require offerors to complete a GSA Form 1364 and four require a GSA Form 1217. The GSA Form 1364 versions requires the submission of information specifically aligned with certain leasing models and avoids mandating submission of

information that is not required for use in evaluation and award under each model. The GSA Form 1217 requires the submission of information specific to the services and utilities of a building in support of the pricing detailed under GSA Form 1364. The forms relate to individual lease procurements and no duplication exists.

Three lease models, Streamlined, Standard, and Succeeding/Superseding, use GSA Form 1364. The 1364 captures all rental components, including the pricing for the initial tenant improvements. The global nature of the 1364 provides flexibility in capturing tenant improvement pricing based on either allowance or turnkey pricing, as required by the solicitation.

The Simplified Lease Model uses GSA Forms 1364A and 1364A–1. This model obtains a firm, fixed price for rent, which includes the cost of tenant improvement construction. Therefore, leases using the Simplified model do not include post-award tenant improvement cost information on the form. The 1364A includes rental rate components and cost data that becomes part of the lease contract and that is necessary to satisfy GSA pricing policy requirements. The 1364A–1 is a checklist that addresses technical requirements as referenced in the Request for Lease Proposals. The 1364A–1 is separate from the proposal itself and is maintained in the lease file; it does not become an exhibit to the lease. The 1364A–1 may contain proprietary offeror information that cannot be released under the Freedom of Information Act.

The Warehouse Lease Model uses GSA Form 1364WH. This model is specifically designed to accommodate the special characteristics of warehouse space and is optimized for space whose predominant use is for storage, distribution, or manufacturing. The 1364WH captures building characteristics unique to warehouse facilities and allows for evaluation of offers based on either area or volume calculations.

The Streamlined, Standard, Succeeding/Superseding, and Warehouse Lease Models use GSA Form 1217. GSA Form 1217 captures the estimated annual cost of services and utilities and the estimated costs of ownership, exclusive of capital charges. These costs are listed for both the entire building and the area proposed for lease to the Government, broken down into specific categories. The GSA Form 1217 was not included in the previous information collection notice and supporting statement. The previous omission was an error that is corrected by inclusion in this information collection request.

DATES: *Submit comments on or before:* June 15, 2016.

ADDRESSES: *Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:* Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217.

Instructions: Please submit comments only and cite Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, 202–969–4066 or via email at *christina.mullins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to (1) evaluate whether the physical attributes of offered properties meet the Government's requirements and (2) evaluate the owner/offeror's price proposal.

B. Annual Reporting Burden

Respondents: 544.

Responses per Respondent: 2.98 (weighted average).

Total Responses: 1,623.

Hours per Response: 4.07 (weighted average).

Total Burden Hours: 6,609.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division, 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–11493 Filed 5–13–16; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day-16-16CB]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

PERFORMANCE PROGRESS AND EVALUATION REPORT (PPER)—Existing Collection in use without an OMB Control Number—Office of Financial Resources (OFR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, approximately 80% of the Centers for Disease Control and Prevention's (CDC) budget is distributed via contracts, grants and cooperative agreements, from the Procurements and Grants Office (PGO) to partners throughout the world to promote health, prevent disease, injury and disability and prepare for new health threats. PGO is responsible for the stewardship of these funds while providing excellent, professional services to our partners and stakeholders.

Currently, CDC uses SF–PPR (a progress report form for Non-Research awards) or other methods to collect information semi-annually from Awardees regarding the progress made over specified time periods on CDC funded projects. The SF–PPR (OMB Control Number: 0970–0406, Expiration Date: 10/31/2015) is owned by the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS). This ICR is being developed by CDC to create a CDC-wide collection tool called the Progress Performance and Evaluation Report (PPER) that will be used to collect data on the progress of CDC Awardees for the purposes of evaluation and to bring the Awardee reporting procedure into compliance with the Paperwork Reduction Act (PRA).

The information collected will enable the accurate, reliable, uniform, and timely submission to CDC, of each Awardee's work plans and progress reports, including strategies, activities and performance measures. The information collected by the PPER is designed to align with, and support the goals outlined for each of the CDC Awardees. Collection and reporting of the information will occur in an efficient, standardized, and user-friendly manner that will generate a variety of routine and customizable reports. The PPER will allow each Awardee to summarize activities and progress towards meeting performance measures and goals over a specified time period specific to each award. CDC will also have the capacity to generate reports that describe activities across multiple Awardees. In addition, CDC will use the information collection to respond to inquiries from HHS, Congress and other stakeholder inquiries about program activities and their impact. The total estimated burden is 6,400 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
CDC Award Recipients	Performance Progress and Evaluation Report.	3,200	1	2

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–11441 Filed 5–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 81 FR 5442–5444, dated February 2, 2016) is amended to reflect the reorganization of the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and the mission and function statements for the *Statistical Support Most Efficient Organization (CCK3), Division of Surveillance, Hazard Evaluations and Field Studies (CCK).*

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2016–11440 Filed 5–13–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–838, CMS–10157 and 10469]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 15, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ________, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–838 Medicare Credit Balance Reporting Requirements
CMS–10157 HIPPA Eligibility Tracking System
CMS–10469 Issuer Reporting Requirements for Selecting a Cost-Sharing Reductions Reconciliation Methodology

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Credit Balance Reporting Requirements; *Use:* Quarterly credit balance reporting is needed to monitor and control the identification and timely collection of improper payments. Credit balances are mainly attributable to provider billing practices and cannot be eliminated by program functions; they will continue to occur. The OIG issued a Management Advisory Report (MAR) on their extended review of credit balances (See Attachment). They state that approximately 90 percent of credit balances result from providers: (1) Billing Medicare and a private insurer for the same service, (2) submitting duplicate billings for services in a manner which cannot be detected by system edits, and (3) billing for services not performed. The MAR recommends that CMS continue its plan of recovery by requiring hospitals to report Medicare credit balances to contractors on a quarterly basis. *Form Number:* CMS–838 (OMB control number: 0938–0600); *Frequency:* Quarterly; *Affected Public:* Private sector (Business or other For-profits); *Number of Respondents:* 52,582; *Total Annual Responses:* 210,328; *Total Annual Hours:* 630,984. (For policy questions regarding this collection contact Anita Crosier at 410–786–0217).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPPA Eligibility Tracking System; *Use:* Federal law requires that CMS take precautions to minimize the security risk to the federal information system. Federal Information Processing Standards Publication (FIPS PUB) 1( ) 1–2 Paragraph 11.7—Security and Authentication states that: "Agencies shall employ risk management techniques to determine the appropriate mix of security controls needed to protect specific data and systems. The selection of controls shall take into account procedures required under applicable laws and regulations." Accordingly, CMS requires that entities who wish to connect to the HETS application via the CMS Extranet and/or Internet are uniquely identified. CMS is required to verify the identity of the

person requesting the Protected Health Information (PHI) and the person's authority to have access to Medicare eligibility information. Furthermore, CMS requires that trading partners who wish to conduct eligibility transactions on a real-time basis with CMS provide certain assurances as a condition of receiving access to the Medicare eligibility information for the purpose of conducting real-time 270/271 inquiry/response transactions. *Form Number:* CMS–10157 (OMB control number: 0938–0960); *Frequency:* Quarterly; *Affected Public:* Private sector (Business or other For-profits and Not-For-Profits); *Number of Respondents:* 2,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 250. (For policy questions regarding this collection contact Rupinder Singh at 410–786–7484).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Issuer Reporting Requirements for Selecting a Cost-Sharing Reductions Reconciliation Methodology; *Use:* Sections 1402 and 1412 of the Affordable Care Act provide for reductions in cost sharing on essential health benefits for low- and moderate-income enrollees in silver level qualified health plans (QHP) on individual market Exchanges. It also provides for reductions in cost sharing for Indians enrolled in QHPs at any metal level. These cost-sharing reductions will help eligible individuals and families afford the out-of-pocket spending associated with health care services provided through Exchange-based QHP coverage.

The law directs QHP issuers to notify the Secretary of the Department of Health and Human Services (HHS) of cost-sharing reductions made under the statute for qualified individuals, and directs the Secretary to make periodic and timely payments to the QHP issuer equal to the value of those reductions. Further, the law permits advance payment of the cost-sharing reduction amounts to QHP issuers based upon amounts specified by the Secretary.

Under established HHS regulations, QHP issuers will receive advance payments of the cost-sharing reductions throughout the year. Each issuer will then be subject to one of two reconciliation processes after the year to ensure that HHS reimbursed each issuer the correct advance cost-sharing amount. This information collection request establishes the data collection requirements for a QHP issuer to report to HHS which reconciliation reporting option the issuer will be subject to for a given benefit year. *Form Number:* CMS–10469 (OMB control number: 0938–1214); *Frequency:* Annually; *Affected Public:* Private sector (Businesses or other for-profits); *Number of Respondents:* 575; *Total Annual Responses:* 575; *Total Annual Hours:* 13,200. (For policy questions regarding this collection contact Pat Meisol at 410–786–1917.)

Dated: May 11, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–11499 Filed 5–13–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10409]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 15, 2016:

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Long Term Care Hospital (LCTH) Continuity Assessment Record and Evaluation (CARE) Data Set; *Use:* Section 3004 of the Affordable Care Act authorized the establishment of quality reporting program for long term care hospitals (LTCHs). Beginning in FY 2014, LTCHs that fail to submit quality measure data may be subject to a 2 percentage point reduction in their annual update to the standard Federal rate for discharges occurring during a rate year. The LTCH CARE Data Set was developed specifically for use in LTCHs for data collection of NQF #0678 Pressure Ulcer measures beginning

October 1, 2012, with the understanding that the data set would expand in future rulemaking years with the adoption of additional quality measures. Relevant data elements contained in other well-known and clinically established data sets, including but not limited to the Minimum Data Set 3.0 (MDS 3.0) and CARE, were incorporated into the LTCH CARE Data Set V1.01, V2.00 and V2.01. LTCH CARE Data Set V3.00 will be implemented April 1, 2016. *Form Number:* CMS–10409 (OMB control number: 0938–1163); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 424; *Total Annual Responses:* 405,344; *Total Annual Hours:* 328,346. (For policy questions regarding this collection contact Staci Payne at 410–786–2838.)

Dated: May 11, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–11500 Filed 5–13–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0872]

Considerations for Use of Histopathology and Its Associated Methodologies To Support Biomarker Qualification; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Considerations for Use of Histopathology and Its Associated Methodologies to Support Biomarker Qualification." This guidance is intended to assist submitters of a biomarker for qualification that conduct nonclinical biomarker qualification studies in which histopathology is used as a reference or truth standard. This guidance discusses the processes that we recommend be considered when generating histopathology data to be included in biomarker studies and outlines the scientific standards recommended for histopathology used in nonclinical biomarker characterization and qualification. The recommendations in this guidance are intended for confirmatory studies in nonclinical biomarker qualification that justify the proposed context of use, where scientifically rigorous evaluation of biomarker performance in relation to histopathologic changes is essential. The principles outlined in this guidance are also applicable to exploratory nonclinical biomarker studies. This guidance finalizes the draft guidance "Use of Histology in Biomarker Qualification Studies," issued in December 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–D–0872 for "Considerations for Use of Histopathology and Its Associated Methodologies to Support Biomarker Qualification; Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hausner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4145, Silver Spring, MD 20993–0002, 301–796–1084.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Considerations for Use of Histopathology and Its Associated Methodologies to Support Biomarker Qualification." The FDA Critical Path Initiative identified the discovery, characterization, qualification, and use of biomarkers as important for improving the efficiency and success rate of medical product development. Biomarkers have been broadly applied to describe the following:

- Structural features from the molecular to the anatomic level (*e.g.,* genetic composition, receptor expression patterns, radiographic appearances);
- Biochemical measurements (*e.g.,* serum levels of electrolytes, cardiac troponins); and
- Physiologic organ system function tests (*e.g.,* creatinine clearance, pulmonary function tests, cardiac ejection fraction, electrocardiography).

The type of study reports to be submitted in support of a biomarker qualification will depend upon the proposed context of use and the ultimate goal of the submission. The proposed context of use dictates the depth, extent, and rigor of the supporting data for the biomarker. If a biomarker becomes qualified, analytically valid measurements of it can be relied upon to have a specific and interpretable meaning (*e.g.,* physiologic, toxicologic, pharmacologic, or clinical) in drug development and regulatory decision-making. Industry can then employ the biomarker for the qualified context of use during premarketing drug development, and FDA reviewers can be confident about its qualified context of use without the need to reconfirm its applicability or utility. Accordingly, data supporting qualification of a nonclinical biomarker should be reliable, repeatable, and of assured integrity.

In the **Federal Register** of December 30, 2011 (76 FR 82306), FDA announced the availability of a draft guidance entitled "Use of Histology in Biomarker Qualification Studies." The Agency received several comments from the pharmaceutical industry and others. We have carefully considered the comments and have made the following changes in response to the comments: (1) Changed the title of the guidance to "Considerations for Use of Histopathology and Its Associated Methodologies to Support Biomarker Qualification"; (2) clarified the scope of the guidance; (3) added more information concerning data used to support biomarker qualification; (4) confirmed and clarified the rationale for assessment of outcomes without knowledge of group assignments in confirmatory studies; and (5) clarified the distinction between biomarker sensitivity and specificity. In addition we have made editorial changes to improve clarity. This guidance finalizes the draft guidance issued in December 2011.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on considerations for the use of histopathology and its associated methodologies to support biomarker qualification. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control numbers 0910–0001 for submissions related to 21 CFR 314, and 0910–0014 for submissions related to 21 CFR 312.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: May 10, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11438 Filed 5–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0514]

Postmarket Surveillance Under Section 522 of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Postmarket Surveillance Under Section 522 of the Federal Food, Drug, and Cosmetic Act." This guidance is intended to assist manufacturers of devices subject to section 522 postmarket surveillance orders by providing an overview of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), information on how to fulfill section 522 obligations, and recommendations on the format, content, and review of postmarket surveillance plan submissions.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–D–0514 for "Postmarket Surveillance Under Section 522 of the Federal Food, Drug, and Cosmetic Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Nicole Jones, Associate Director Program Operations, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4108, Silver Spring, MD 20993–0002, 301–796–6062.

SUPPLEMENTARY INFORMATION:

I. Background

Section 522 of the FD&C Act (21 U.S.C. 360*l*) provides FDA with the authority to require manufacturers to conduct postmarket surveillance of certain class II or class III devices. This guidance is intended to assist manufacturers of devices subject to section 522 postmarket surveillance orders by providing an overview of section 522 of the FD&C Act, information on how to fulfill section 522 obligations, and recommendations on the format, content, and review of postmarket surveillance plan submissions.

FDA issued the draft of this guidance, originally entitled "Draft Guidance for Industry and Food and Drug Administration Staff; Procedures for Handling Section 522 Postmarket Surveillance Studies," on August 16, 2011 (76 FR 50740). The comment period ended on November 14, 2011.

This document supersedes the guidance entitled, "Guidance for Industry and FDA Staff; Postmarket Surveillance under Section 522 of the Federal Food, Drug, and Cosmetic Act," dated April 27, 2006.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on postmarket surveillance under section 522 of the FD&C Act. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Postmarket Surveillance Under Section 522 of the Federal Food, Drug, and Cosmetic Act" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1754 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 822 have been approved under 0910–0449.

Dated: May 10, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11450 Filed 5–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1203]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 15, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0661. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements

OMB Control Number 0910–0661—Extension

Under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(m)), FDA is authorized to exempt a humanitarian use device (HUD) from the effectiveness requirements in sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; (3) the device will not expose patients to an unreasonable or significant risk of illness or injury; and (4) the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

HUDs approved under an HDE cannot be sold for an amount that exceeds the costs of research and development, fabrication, and distribution of the device (*i.e.,* for profit), except in narrow circumstances. Section 613 of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), signed into law on July 9, 2012, amended section 520(m) of the FD&C Act. Under section 520(m)(6)(A)(i) of the FD&C Act, as amended by FDASIA, a HUD approved under an HDE is eligible to be sold for profit if the device meets the following criteria: The device is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or the device is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients, or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.

Section 520(m)(6)(A)(ii) of the FD&C Act, as amended by FDASIA, provides that the Secretary of Health and Human Services will assign an annual distribution number (ADN) for devices that meet the eligibility criteria to be permitted to be sold for profit. The ADN is defined as the number of devices "reasonably needed to treat, diagnose, or cure a population of 4,000 individuals in the United States", and therefore shall be based on the following information in a HDE application: The number of devices reasonably necessary to treat such individuals.

Section 520(m)(6)(A)(iii) of the FD&C Act (*http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterVDrugsandDevices/default.htm*) provides that an HDE holder immediately notify the Agency if the number of devices distributed during any calendar year exceeds the ADN. Section 520(m)(6)(C) of the FD&C Act provides that an HDE holder may petition to modify the ADN if additional information arises.

On August 5, 2008, FDA issued a guidance entitled "Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and Food and Drug Administration Staff—Humanitarian Device Exemption (HDE) Regulation: Questions and Answers" (*http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm110203.pdf*). The guidance was developed and issued prior to the enactment of FDASIA, and certain sections of this guidance may no longer be current as a result of FDASIA.

In the **Federal Register** of March 18, 2014 (79 FR 15130), FDA announced the availability of the draft guidance entitled "Humanitarian Device Exemption: Questions and Answers; Draft Guidance for Humanitarian Device Exemption Holders, Institutional Review Boards, Clinical Investigators, and Food and Drug Administration Staff", that when finalized, will represent FDA's current thinking on this topic.

FDA is requesting the extension of OMB approval for the collection of information required under the statutory mandate of sections 515A (21 U.S.C. 360e–1) and 520(m) of the FD&C Act as amended.

In the **Federal Register** of January 15, 2016 (81 FR 2220), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two comments were received. One comment was outside of the scope of the four information collection-related topics on which the notice solicits public comment. We did not consider the other comment because it was submitted in a foreign language and was not accompanied by an English translation as required in 21 CFR 10.20(c)(2).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity/section of FD&C Act (as amended) or FDASIA	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pediatric Subpopulation and Patient Information—515A(a)(2) of the FD&C Act	6	1	6	100	600

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity/section of FD&C Act (as amended) or FDASIA	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Exemption from Profit Prohibition Information—520(m)(6)(A)(i) and (ii) of the FD&C Act	3	1	3	50	150
Request for Determination of Eligibility Criteria—613(b) of FDASIA	2	1	2	10	20
ADN Notification—520(m)(6)(A)(iii) of the FD&C Act	1	1	1	100	100
ADN Modification—520(m)(6)(C) of the FD&C Act	5	1	5	100	500
Total					1,370

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's Center for Devices and Radiological Health receives an estimated average of six HDE applications per year. FDA estimates that three of these applications will be indicated for pediatric use. We estimate that we will receive approximately two requests for determination of eligibility criteria per year. FDA estimates that very few or no HDE holders will notify the Agency that the number of devices distributed in the year has exceeded the ADN. FDA estimates that five HDE holders will petition to have the ADN modified due to additional information on the number of individuals affected by the disease or condition.

Dated: May 11, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11532 Filed 5–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Grant Program; Correction

AGENCY: Indian Health Service, HHS.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on April 7, 2016, for the FY 2016 Tribal Management Grant Program. The notice contained the incorrect Fiscal Year regarding funding availability.

FOR FURTHER INFORMATION CONTACT: Michelle Eagle Hawk, Deputy Director, Office of Direct Service and Contracting Tribes, Indian Health Service, 5600 Fishers Lane, Mail Stop 08E17, Rockville, MD 20857, telephone (301) 443–1104. (This is not a toll-free number.)

Correction

In the **Federal Register** of April 7, 2016, in FR Doc. 2016–07950, on page 20396, in the second column, under the heading "II. Award Information, Estimated Funds Available," the correct first sentence should read as follows:

The total amount of funding identified for the current fiscal year (FY) 2016 is approximately $2,412,000.

Dated: May 4, 2016.

Mary Smith,

Principal Deputy Director, Indian Health Service.

[FR Doc. 2016–11545 Filed 5–13–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 10, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11397 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: June 6–7, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: June 7, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Regis, Washington, DC, 923 16th and K Streets NW., Washington, DC 20006.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Dissemination and Implementation Research in Health Study Section.

Date: June 8–9, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warick Allerton Hotel, 701 N. Michigan Avenue, Chicago, IL 60611.

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.

Contact Person: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Eileen W Bradley, DSC, IRG Chief, Surgical Sciences Biomedical Imaging and Bioengineering, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Craig Giroux, Ph.D., Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204, *girouxcn@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 9, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street NW., Washington, DC 20037.

Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development and Application of PET and SPECT Imaging Ligands as Biomarkers for Drug Discovery and for Pathophysiological Studies of CNS Disorders (R21).

Date: June 9, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: June 10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enabling Imaging Technologies.

Date: June 10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13-345: Development of Pediatric Formulations and Drug Delivery Systems.

Date: June 10, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon S. Low, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11472 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biobehavior, Inflammation, and Stress.

Date: May 19, 2016.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11473 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), notice is hereby given of the joint meeting of the National Cancer Advisory Board (NCAB) and NCI Board of Scientific Advisors (BSA).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

A portion of the National Cancer Advisory Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board; *Ad Hoc* Subcommittee on Global Cancer Research.

Open: June 20, 2016, 4:30 p.m. to 6:00 p.m.

Agenda: Discussion on Global Cancer Research.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Dr. Edward Trimble, Executive Secretary, NCAB *Ad Hoc* Subcommittee on Global Cancer Research, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical

Center Drive, Room 3W562, Bethesda, MD 20892, (240) 276–5796, *trimblet@mail.nih.gov.*

Name of Committee: National Cancer Advisory Board and Board of Scientific Advisors.

Open: June 21, 2016, 8:00 a.m. to 4:00 p.m.

Agenda: Joint meeting of the National Cancer Advisory Board, and NCI Board of Scientific Advisors; NCI Board of Scientific Advisors Concepts Review, NCI Acting Director's report.

Closed: June 21, 2016, 4:00 p.m. to 5:30 p.m.

Agenda: Review of NCAB grant applications.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page:

NCAB: *http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,*

BSA: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 10, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11428 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Foundations of Non-Invasive Functional Human Brain Imaging and Recording.

Date: June 6, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Early Phase Clinical Trials.

Date: June 7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Non-Invasive Neuromodulation—Mechanisms and Dose/Response Relationships for Targeted CNS Effects.

Date: June 9, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 9, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11398 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute, Special Emphasis Panel; 3D Human Tissue Culture Systems.

Date: June 14, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 2E032/034, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–6384, *gravesr@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; R13 Conference Grants Review.

Date: June 14, 2016.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Bratin K. Saha, Ph.D. Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W556, Bethesda, MD 20892–9750, 240–276–6411, *sahab@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; NCI Research Specialist Award—3.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center 5701 Marinelli Road Bethesda, MD 20852.

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division Of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W242, Bethesda, MD 20892–9750, 240–276–6372, *zouzhiq@nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; Genomic Data Analysis Network (U24).

Date: June 17, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Dona Love, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W236, Rockville, MD 20892–9750, 240–276–5264, *donalove@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; NCI R03 SEP–3.

Date: June 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; NCI Omnibus R03 SEP–1.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise L. Stredrick, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W640, Bethesda, MD 20892–9750, 240–276–5264, *stredrid@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; NCI Research Specialist Award—2 (R50).

Date: June 23–24, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda One, Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Viatcheslav A. Soldatenkov, MD, Ph.D. Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892–9750, 240–276–6378, *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; Assay Validation for High Quality Markers for NCI-Supported Clinical Trials (UH2/UH3)

Date: June 23, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W264, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–6384, *gravesr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Epidemiology Studies: Childhood Cancer Survivors and Core Infrastructure and Methodology Research.

Date: June 24, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W108, Bethesda, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus R03 SEP—1.

Date: June 28–29, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624, Bethesda, MD 20892–9750, 240–276–5864, *jennifer.schiltz@mail.nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Detection, Diagnosis, and Treatment Technologies for Global Health.

Date: June 29, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Gerard Lacourciere, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892–9750, 240–276–5457, *gerard.lacourciere@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Research in Cancer Nanotechnology.

Date: July 21, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 3E030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Gerard Lacourciere, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892–9750, 240–276–5457, *gerard.lacourciere@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 10, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11395 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI T32 Institutional Training Grants.

Date: June 6, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 10, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11396 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine: Cancellation of Meeting

Notice is hereby given of the cancellation of the PubMed Central National Advisory Committee, June 7, 2016, 9:30 a.m. to June 7, 2016, 3:00 p.m., National Library of Medicine, Building 38, 2nd Floor, Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892 which was published on January 26, 2016, 81 FR 16, Page 4314.

Dated: May 10, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11399 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–251: Behavioral Science Track Award for Rapid Transition Review.

Date: June 6, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

Date: June 9–10, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: June 10, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western Tuscan Inn, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–15–006: NIH Director's Early Independence Award Review.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community-Level Health Promotion Study Section.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Washington DC Convention Center, 900 10th St. NW., Washington, DC 20001.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group;

Psychosocial Risk and Disease Prevention Study Section.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Stacey FitzSimmons, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: June 13–14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

Date: June 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westgate Hotel, San Deigo, CA 92101.

Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: June 13–14, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11475 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular Aspects of Diabetes and Obesity.

Date: June 6–7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301–435–2514, *riverase@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: June 6–7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review; National Institutes of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892–7892, (301) 402–6297, *pileggia@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: June 6–7, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathological Inflammation, Allergy and Asthma.

Date: June 9, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207, MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11474 Filed 5–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings Accompanied by Food and Drug Administration (FDA) Data

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that the Automated Commercial Environment (ACE) will be the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic entries and entry summaries associated with the entry types specified in this notice, for merchandise that is subject to the import requirements of the Food and Drug Administration (FDA). This document also announces that the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for purposes of processing these electronic filings.

DATES: *Effective June 15, 2016:* ACE will be the sole CBP-authorized EDI system for electronic entry and entry summary filings for merchandise subject to the import requirements of the FDA, associated with the following entry types: 01 (consumption), 03 (consumption—antidumping/countervailing duty), 06 (consumption—Foreign Trade Zone (FTZ)), 11 (informal), 23 (temporary importation under bond), 51 (Defense Contract Administration Service Region), and 52 (government—dutiable).

FOR FURTHER INFORMATION CONTACT: Questions related to this notice may be emailed to *ASKACE@cbp.dhs.gov* with the subject line identifier reading "ACS to ACE—FDA transition".

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), establishes the requirement for importers of record to make entry for merchandise to be imported into the customs territory of the United States. Customs entry information is used by U.S. Customs and Border Protection (CBP) and Partner Government Agencies (PGAs) to determine whether merchandise may be released from CBP custody. Importers of record are also obligated to complete the entry by filing an entry summary declaring the value, classification, rate of duty applicable to the merchandise and such other information as is necessary for CBP to properly assess duties, collect accurate statistics and determine whether any other applicable requirement of law is met.

The customs entry requirements were amended by Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act, or Mod Act. In particular, section 637 of the Mod Act amended section 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(1)(A)) by revising the requirement to make and complete customs entry by submitting documentation to CBP to allow, in the alternative, the electronic transmission of such entry information pursuant to a CBP-authorized electronic data interchange (EDI) system. CBP created the Automated Commercial System (ACS) to track, control, and process all commercial goods imported into the United States. CBP established the specific requirements and procedures for the electronic filing of entry and entry summary data for imported merchandise through the Automated Broker Interface (ABI) to ACS.

Transition From ACS to ACE

In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Mod Act and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884), CBP developed the Automated Commercial Environment (ACE) to eventually replace ACS as the CBP-authorized EDI system. Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE.

On February 19, 2014, President Obama issued Executive Order (E.O.) 13659, *Streamlining the Export/Import Process for America's Businesses,* in order to reduce supply chain barriers to commerce while continuing to protect our national security, public health and safety, the environment, and natural resources. *See* 79 FR 10657 (February 25, 2014). Pursuant to E.O. 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export.

On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

CBP has developed a staggered transition strategy for decommissioning ACS. The first two phases of the transition were announced in a **Federal Register** notice on February 29, 2016. (81 FR 10264). This notice announces the third phase of the transition. CBP will continue to monitor the FDA filing rates in ACE. Should there be a need to avoid a substantial adverse impact on trade, CBP will reassess the transition completion date for FDA filings.

ACE as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings Accompanied by FDA Data

This notice announces that, effective June 15, 2016, ACE will be the sole CBP-authorized EDI system for electronic entries and entry summaries for merchandise that is subject to import requirements of the Food and Drug Administration (FDA), associated with the following entry types:

- 01—Consumption—Free and Dutiable
- 03—Consumption—Antidumping/Countervailing Duty
- 06—Consumption—Foreign Trade Zone (FTZ)
- 11—Informal—Free and Dutiable
- 23—Temporary Importation Bond (TIB)
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable

ACS as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

- Electronic entry and entry summary filings for the following entry types must continue to be filed only in ACS: 02—Consumption—Quota/Visa
- 07—Consumption—Antidumping/Countervailing Duty and Quota/Visa Combination
- 08—NAFTA Duty Deferral
- 09—Reconciliation Summary
- 12—Informal—Quota/Visa (other than textiles)
- 21—Warehouse
- 22—Re-Warehouse
- 31—Warehouse Withdrawal—Consumption
- 32—Warehouse Withdrawal—Quota
- 34—Warehouse Withdrawal—Antidumping/Countervailing Duty
- 38—Warehouse Withdrawal—Antidumping/Countervailing Duty &
- Quota/Visa Combination
- 41—Direct Identification Manufacturing Drawback
- 42—Direct Identification Unused Merchandise Drawback
- 43—Rejected Merchandise Drawback
- 44—Substitution Manufacturer Drawback
- 45—Substitution Unused Merchandise Drawback
- 46—Other Drawback
- 61—Immediate Transportation
- 62—Transportation and Exportation
- 63—Immediate Exportation
- 69—Transit (Rail only)
- 70—Multi-Transit (Rail only)

CBP will publish a subsequent **Federal Register** Notice in the near future when these entry and entry summary filings will be transitioned in ACE.

Due to Low Shipment Volume, Filings for the Following Entry Types Will Not Be Automated in Either ACS or ACE

- 04—Appraisement
- 05—Vessel—Repair
- 24—Trade Fair
- 25—Permanent Exhibition
- 26—Warehouse—Foreign Trade Zone (FTZ) (Admission)
- 33—Aircraft and Vessel Supply (For Immediate Exportation)
- 64—Barge Movement
- 65—Permit to Proceed
- 66—Baggage

Dated: May 11, 2016.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2016–11479 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Exercise Equipment

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of two pieces of exercise equipment known as the Matrix® G3–S60 Selectorized Dip/Chin Assist and the Matrix® G3–FW52 Back Extension Bench. Based upon the facts presented, CBP has concluded that the country of origin of the exercise equipment is the United States under Scenario One and China under Scenario 2.

DATES: The final determination was issued on May 10, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 10, 2016, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of two pieces of exercise equipment known as the Matrix® G3–S60 Selectorized Dip/Chin Assist and the Matrix® G3–FW52 Back Extension Bench, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H270580, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that under Scenario One, the processing in the United States results in a substantial transformation, whereas under Scenario Two, the processing in the United States does not result in a substantial transformation. Therefore, the country of origin of the exercise equipment for purposes of U.S. Government procurement is the United States under Scenario One and China under Scenario Two.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 10, 2016.

Myles B. Harmon,

Acting Executive Director, Regulations and Rulings, Office of Trade.

HQ H270580

May 10, 2016

OT:RR:CTF:VS H270580 RMC

CATEGORY: Country of Origin

John A. Knab
Garvey Shubert Barer PC
1000 Potomac Street NW
Suite 200
Washington, DC 20007

Re: U.S. Government Procurement; Country of Origin of Exercise Equipment; Substantial Transformation

Dear Mr. Knab:

This is in response to your letter dated November 3, 2015, requesting a final determination on behalf of Johnson Health Tech North America ("Johnson") pursuant to Subpart B of Part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or for products offered for sale to the U.S. Government. This final determination concerns the country of origin of two pieces of exercise equipment. As a U.S. importer, Johnson is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Johnson is an exercise equipment manufacturer based in Cottage Grove, Wisconsin. It is a wholly-owned subsidiary of the Taiwanese entity Johnson Health Tech. Co., Ltd. ("JHT"). JHT, through its subsidiaries, operates in Taiwan, China, and the United States.

The two pieces of equipment at issue are the Matrix® G3–S60 Selectorized Dip/Chin Assist ("G3 Dip") and the Matrix® G3–FW52 Back Extension Bench ("G3 Back Extension"). The G3 Dip machine is designed to be used for pull-ups and triceps dips. The user kneels on a counterweighted lever that supports some of the user's body weight during pull-up or triceps-dip exercises. This upward pressure helps the user develop strength before transitioning to unassisted pull-ups or triceps dips. The G3 Back Extension is an adjustable bench, angled at 45 degrees, designed to be used for lower-back exercises such as hyperextensions.

In its submission, Johnson described two scenarios for assembling the exercise equipment in the United States. The first scenario would apply to both the G3 Dip and the G3 Back Extension and involves importing all component parts for the equipment from China and welding, painting, and assembling them in the United States. The second scenario would apply only to the G3 Dip and is similar to the first scenario except that some of the sub-assemblies would be welded together in China. The specifics of each scenario are described in greater detail below.

1. Scenario One—Design, Weldments, and Assembly in the United States

a. Design in the United States

Johnson states that the G3 Dip and G3 Back Extension will be derived from previous industrial designs that were completed in the United States, although some additional U.S. industrial design may be needed to refresh the look of the equipment. In the design process, U.S.-based engineers will use SolidWorks software to create 3D models and 2D drawings from computer models. Each unit will generally require between 100 and 200 2D computer drawings representing between 300 and 500 separate components and subassemblies. These 2D drawings will then be used as the blueprints in the manufacturing process.

b. Component Parts and Materials Come From China

The G3 Dip will consist of approximately 500 parts all produced in China from Chinese materials except for the cable that connects the weights to the counterweight. This cable will be procured from a U.S. supplier but is of unknown origin. The G3 Back Extension will consist of approximately 200 parts all produced in China from Chinese materials.

c. Description of Manufacturing Process

i. Description of Weldments/Major Subassemblies

Johnson states that the equipment will consist of a number of major subassemblies referred to as "weldments." Each weldment consists of a number of metal parts that are welded together to create a major component. These weldments are subsequently either welded or bolted together to form the finished product.

Nine weldments will comprise the G3 Dip: (1) The weight tower frame; (2) the base frame with steps; (3) the kneel pad support; (4) the left-hand chin-up bars; (5) the right-hand chin-up bars; (6) the head plate; (7) the add-a-weight frame support; (8) the add-a-weight weight stack support; and (9) the belt termination. The G3 Back Extension will have three weldments: (1) the base exercise frame; (2) the telescopic adjustment tube; and (3) the thigh pad support.

Johnson notes that none of the parts as imported from China or the weldments as assembled in the United States will be able to function on their own until they are assembled, welded, or bolted together in the United States.

ii. Chinese Operations

In China, Johnson will purchase steel tubing that becomes the basis for the equipment's frame. The tubes will be cut to length, punched or drilled, and bent into the required shape before being packaged with individual parts and sent to the United States.

iii. Assembly in the United States

In the United States, Johnson will first clean the steel tubes in a steam booth and then clamp them into various weld fixtures for welding into weldments.

With respect to the G3 Dip, each weldment will require the following number of welding seams to fuse the various metal components together:

(1) Weight Tower Frame—18 seams;
(2) Base Frame With Steps—12 seams;
(3) Kneel Pad Support—6 seams;
(4) Left-Hand Chin-Up Bar—4 seams;
(5) Right-Hand Chin-Up Bar—4 seams;
(6) Head Plate—1 seam;
(7) Add-A-Weight Frame Support—1 seam;
(8) Add-A-Weight Weight Stack Support—1 seam;
(9) Belt Termination—2 seams.

With respect to the G3 Back Extension each weldment will need the following number of welding seams to fuse the various metal components together:

(1) Base Exercise Frame—16 seams;
(2) Telescopic Adjustment Tube—4 seams;
(3) Thigh Pad Support—2 seams.

After welding the metal components, workers will grind down some of the welds to ensure a proper fit for the final product. Next, metal components will be painted with powder-coat paint and placed into a paint oven to cure the paint. Some of the painted components will then be painted a second time with clear coat to protect the finish. At this point, all components and subassemblies will be ready for assembly into the final product, which will involve bolting together weldments; fastening hardware; adding rubber grips; capping off tube ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards.

For the G3 Dip, Johnson states that it will take approximately 255 steps to assemble the 500 parts that make up the final product. As for the G3 Back Extension, it will take workers 148 steps to assemble the 200 parts that comprise the finished bench.

iv. Post-Assembly Inspection and Testing

Johnson states that significant inspection and testing will be required for each piece of G3 equipment. The inspection will generally consist of a geometric measurement and analysis of the incoming components, a visual inspection of defects in workmanship and materials, functional testing of assembled units, inspection of paint, and cable tensile testing.

v. Labor & Investment in the United States

Johnson states that in order to assemble equipment in the United States using Scenario 1, it will need to hire at least 16 additional employees in the United States. Further investments will also need to be made in designing and building at least two new weld features, expanding into or acquiring new factory space, and updating IT infrastructure.

2. Scenario Two—Design, Some Weldments, and Assembly in the United States

As noted above, Scenario Two would apply only to the G3 Dip machine. It is similar to Scenario One except that three of the nine weldments will be welded together in China and sent to the United States as pre-welded components: (1) the add-a-weight frame support; (2) the add-a-weight weight stack support; and (3) the belt termination. Workers in the United States will then conduct a pre-cleaning and degreasing, an incoming inspection, painting and curing, and assembly on the Chinese-produced weldments. As a result of the additional welding in China, four fewer welding seams would be needed in the United States under Scenario 2. Otherwise, the steps required under Scenario 2 are the same as those described above under "Description of the Manufacturing Process" for Scenario 1. Johnson states that it will take 210 steps to assemble the G3 Dip under Scenario Two and will require 17 additional employees in the United States (one employee more than under Scenario One due to the additional inspections required).

ISSUE:

What is the country of origin of the G3 Back Extension and the G3 Dip for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of part 177 consistent with Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens* v. *United States*, 6 CIT 204 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

CBP has consistently held that complex and meaningful assembly operations in the United States can result in a substantial transformation. *See, e.g.*, HQ H156919, dated July 26, 2011. By contrast, assembly operations that are minimal or simple will generally not result in a substantial transformation. For example, in HQ 733188, dated July 5, 1990, CBP held that no substantial transformation occurred when Venezuelan exercise benches and boards were assembled in the United States. The metal frames as imported from Venezuela were essentially complete, and the U.S. assembly consisted primarily of attaching the cushions and minor parts. Further, no machining was done in the United States and no specialized training, skill, or equipment was required to assemble the exercise equipment. CBP thus held that no substantial transformation occurred in the United States.

Similarly, the Court of International Trade has applied the "essence test" to determine whether the identity of an article is changed through assembly or processing. For example, in *Uniroyal, Inc.* v. *United States,* 3 CIT 220, 225, 542 F. Supp. 1026, 1030 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the "very essence of the finished shoe" and thus were not substantially transformed into a product of the United States. Similarly, in *National Juice Products Association* v. *United States,* 10 CIT 48, 61, 628 F. Supp. 978, 991 (1986), the court held that imported orange juice concentrate "imparts the essential character" to the completed orange juice and thus was not substantially transformed into a product of the United States.

Here, with respect to Scenario One, although all or nearly all the parts will be of Chinese origin, the extent of U.S. assembly operations is sufficiently complex and meaningful to result in a substantial transformation. Unlike the exercise equipment at issue in HQ 733188, the G3 Dip and G3 Back Extension under Scenario One will not be essentially complete when their component parts are imported. To the contrary, they will require substantial additional work to create a functional article of commerce. Under Scenario 1 for the G3 Dip, U.S. workers will need to produce nine separate weldments and weld 49 seams to create the major components that comprise the finished equipment. Likewise, with respect to the G3 Back Extension, U.S. workers will need to produce three separate weldments and weld 22 seams to create the major components that comprise the finished equipment.

In addition to the extensive welding operations that U.S. workers will undertake in Wisconsin, the parts that make up the frame will need to be cleaned and degreased, ground down, and sprayed with paint and clear coat in the United States. Next, workers will assemble 200 to 500 individual parts that go into the final product in an assembly process that will involve 148 to 255 individual steps. The assembly process will involve fastening hardware; adding rubber grips; capping off tube ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards. Together with the U.S. welding operations, this assembly will cause the individual parts to lose their separate identities and to become integral components of a product with a new name, character, and use.

In addition to the extent and complexity of the U.S. assembly operations, several additional factors weigh in favor of finding that a substantial transformation will occur in the United States. As noted above, CBP also considers the resources expended on product design and development in the United States and the degree of skill required during the actual manufacturing process. Here, Johnson will expend significant resources in the United States on product development when its U.S.-based engineers create 3D CAD models and 2D drawings for use as blueprints during the manufacturing process. Furthermore, these engineers and the workers who will weld the subassemblies together require significant education, skill, and attention to detail.

With respect to Scenario Two, however, three of the G3 Dip's weldments will be imported from China as pre-assembled components (the add-a-weight frame support, the add-a-weight weight stack support, and the belt termination). Under *Uniroyal,* 3 CIT 220, these critical components together impart the "very essence" of the finished product. The processing in the United States thus will not result in a substantial transformation. *See also National Juice Prods. Ass'n,* 10 CIT 48.

Based on the facts presented, the country of origin of the exercise equipment is the United States under Scenario One and China under Scenario Two.

HOLDING:

The country of origin of the finished exercise equipment under Scenario One is the United States for purposes of government procurement and China under Scenario Two.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Myles B. Harmon,

Acting Executive Director Regulations & Rulings Office of Trade.

[FR Doc. 2016–11478 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0010; OMB No. 1660–0017]

Agency Information Collection Activities: Proposed Collection; Comment Request; Public Assistance Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for the Public Assistance (PA) program eligibility determinations, grants management, and compliance with Federal laws and regulations.

DATES: Comments must be submitted on or before July 15, 2016.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2016–0010. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cliff Brown, Executive Officer, Recovery Directorate, Public Assistance Division, 202–646–4136. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), authorizes grants to assist State, Tribal, and local governments and certain Private Non-Profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies. 44 CFR part 206 specifies the information collections necessary to facilitate the provision of assistance under the PA Program. 44 CFR 206.202 describes the general application procedures for the PA program.

Collection of Information

Title: Public Assistance Program.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0017.

FEMA Forms: FEMA Form FEMA Form–009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant's Benefits Calculation Worksheet; FEMA Form 009–0–111, Quarterly Progress Reports and FEMA Form 055–0–0–1, Request for Arbitration resulting from Dispute Resolution Pilot Program.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents.

Affected Public: State, Local or Tribal government.

Number of Respondents: 976.

Number of Responses: 346,960.

Estimated Total Annual Burden Hours: 359,186.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $19,625,807. There are no record keeping, capital, start-up or maintenance costs associated with this information collection. The cost to the Federal Government is $750,458.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: May 10, 2016.

Richard W. Mattison

Records Management Branch Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–11464 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2583–16; DHS Docket No. USCIS–2014–0006]

RIN 1615–ZB51

Extension of the Designation of Nicaragua for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Nicaragua for Temporary Protected Status (TPS) for 18 months, from July 6, 2016 through January 5, 2018.

The extension allows currently eligible TPS beneficiaries to retain TPS through January 5, 2018, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because conditions in Nicaragua supporting its designation for TPS continue to be met.

Through this Notice, DHS also sets forth procedures necessary for eligible nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EAD) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Nicaragua and whose applications have been granted. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria, and (2) all TPS eligibility criteria (including continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999).

For individuals who have already been granted TPS under Nicaragua's designation, the 60-day re-registration period runs from May 16, 2016 through July 15, 2016. USCIS will issue new EADs with a January 5, 2018, expiration date to eligible Nicaragua TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on July 5, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Nicaragua for 6 months, through January 5, 2017, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and the impact on Employment Eligibility Verification (Form I–9) and the E-Verify processes.

DATES: The 18-month extension of the TPS designation of Nicaragua is effective July 6, 2016, and will remain in effect through January 5, 2018. The 60-day re-registration period runs from May 16, 2016 through July 15, 2016. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

You can find specific information about Nicaragua's TPS extension by selecting "Nicaragua" from the menu on the left side of the TPS Web page.

- For questions concerning this Notice, you can also contact Jerry Rigdon, Chief of the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at 202–272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).
- When the Secretary terminates a country's TPS designation, although TPS benefits end, former TPS beneficiaries continue to hold any lawful immigration status they maintained or obtained while registered for TPS.

When and why was Nicaragua designated for TPS?

Following the destruction wrought by Hurricane Mitch, which struck Nicaragua in October of 1998, the Attorney General designated Nicaragua for TPS on January 5, 1999, environmental disaster grounds. *See Designation of Nicaragua Under Temporary Protected Status,* 64 FR 526 (Jan. 5, 1999). The Secretary last announced an extension of Nicaragua's TPS designation on October 16, 2014, based on his determination that the conditions warranting the designation continued to be met. *See Extension of the Designation of Nicaragua for Temporary Protected Status,* 79 FR 62176 (Oct. 16, 2014). This announcement is the thirteenth extension of the TPS designation of Nicaragua since the original designation in 1999.

What authority does the Secretary have to extend the designation of Nicaragua for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Nicaragua through January 5, 2018?

DHS and the Department of State (DOS) have reviewed conditions in Nicaragua. Based on the reviews and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because conditions in Nicaragua supporting its designation for TPS persist. Hurricane Mitch and subsequent environmental disasters have substantially disrupted living conditions in Nicaragua, such that Nicaragua remains unable, temporarily, to handle adequately the return of its nationals.

Hurricane Mitch made landfall in Nicaragua in October 1998. The storm killed 3,045 people and 885 were reported missing. The devastation of Hurricane Mitch affected nearly 868,000 people. Landslides and floods destroyed entire villages and caused extensive damages to the transportation network, housing, medical and educational facilities, water supply and sanitation facilities, and the agricultural sector. Overall damage estimates ranged between $1.3–1.5 billion.

Nicaragua continues to suffer from the residual effects of Hurricane Mitch, and subsequent disasters have caused additional damage and added to the country's fragility. The regions most devastated by Hurricane Mitch continue to be the poorest and least developed in the country. Nicaragua is particularly vulnerable to recurring natural disasters and the impact of climate change, and its resilience to such threats is severely limited by poverty, lack of infrastructure, and governance challenges.

Since the last extension of Nicaragua's TPS designation, Nicaragua has experienced a series of environmental disasters that have exacerbated the persisting disruptions caused by Hurricane Mitch and significantly compromised Nicaragua's ability to adequately handle the return of its nationals. Nicaragua suffered from heavy rains and extensive flooding in October 2014, May 2015, and June 2015. Significant earthquakes struck in Nicaragua and off its coast in April and October of 2014. Between early May and late July 2015, the Telica volcano erupted 426 times, causing respiratory problems in neighboring communities. Much of the country is suffering from a prolonged regional drought, which, combined with the coffee rust epidemic in Central America, has negatively impacted livelihoods and food security.

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[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

Hurricane Mitch and subsequent environmental disasters have had a significant negative effect on Nicaragua's infrastructure. Only a fraction of the 41,000 homes that were damaged or destroyed by Hurricane Mitch have been reconstructed. Heavy rains, flooding, and earthquakes have continued to destroy or degrade the country's housing stock, leaving Nicaragua with a chronic housing deficit. Damages to roads and bridges accounted for approximately 60 percent of Mitch-related reconstruction costs. Approximately 1,500 kilometers of paved and 6,500 kilometers of unpaved roads were damaged and 3,800 meters of bridges were damaged or destroyed. Transportation infrastructure in the regions hardest hit by Hurricane Mitch has not been properly rehabilitated since the storm and has been damaged by subsequent flooding. Only 12 percent of Nicaragua's roads are paved, representing the lowest percentage in Central America. Damage to many schools and health care facilities caused by Hurricane Mitch continues to go unrepaired. Consequently, the need for reconstruction, infrastructure improvement, and disaster preparedness projects remains ongoing.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- Conditions supporting the designation of Nicaragua for TPS continue to be met. *See* INA section 244(b)(1)(B), (b)(3)(A) and (C), 8 U.S.C. 1254a(b)(1)(B), (b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as a result of an environmental disaster. *See* INA section 244(b)(1)(B)(i), 8 U.S.C. 1254a(b)(1)(B)(i).
- Nicaragua continues to be unable, temporarily, to adequately handle the return of its nationals (or aliens having no nationality who last habitually resided in Nicaragua). *See* INA section 244(b)(1)(B)(ii), 8 U.S.C. 1254a(b)(1)(B)(ii).
- The designation of Nicaragua for TPS should be extended for an 18-month period from July 6, 2016 through January 5, 2018. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 2,550 current Nicaragua TPS beneficiaries who are expected to file for re-registration under the extension.

Notice of Extension of the TPS Designation of Nicaragua

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies that conditions supporting Nicaragua's designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Nicaragua for 18 months, from July 6, 2016 through January 5, 2018. *See* INA section 244(b)(2) and (b)(3), 8 U.S.C. 1254a(b)(2) and (b)(3).

Jeh Charles Johnson,
Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Nicaragua, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765).

- If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. You do not need to pay this fee if you are under the age of 14 or are 66 or older.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765), regardless of your age, if you want an EAD.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue EADs promptly. Filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Nicaragua, P.O. Box 4413, Chicago, IL 60680.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Nicaragua, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When submitting a re-registration application and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA.

E-filing

In May 2016, USCIS will begin processing applications for Nicaragua TPS in its electronic immigration system. After you file by paper at the designated USCIS mailing address noted above, USCIS will scan your application(s) and supporting documents for adjudication electronically. You will receive a USCIS Account Acceptance Notice in the mail with instructions on how to create a USCIS online account. USCIS will continue processing your application for TPS Nicaragua even if you choose not to access your online account right away. USCIS also will continue to send you copies of notifications about your case by mail through the U.S. Postal Service.

Having a USCIS online account allows you to:

- Check the status of your case;
- Receive notifications and case updates;
- Respond to requests for evidence; and
- Manage your contact information online, including updating your address.

Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at *www.uscis.gov/tps* under "Nicaragua."

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through January 5, 2017?

Provided that you currently have TPS under the designation of Nicaragua, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Received an EAD under the last extension of TPS for Nicaragua; and
- Have an EAD with a marked expiration date of July 5, 2016, bearing the notation "A–12" or "C–19" on the face of the card under "Category."

Although this Notice automatically extends your EAD through January 5, 2017, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under "List A." You may present an acceptable receipt for a List A, List B, or List C document as described in the Employment Eligibility Verification (Form I–9) Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen, or damaged. If you present an acceptable receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of July 5, 2016, and states "A–12" or "C–19" under "Category," it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through January 5, 2017 (see the subsection titled "*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through January 5, 2017, based on your TPS. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through January 5, 2017. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of July 5, 2016, that state "A–12" or "C–19" under "Category" have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once July 5, 2016, is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). Your employer does not need to reverify your employment authorization on Form I–9 until January 5, 2017, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Form I–9 if he or she did not keep a copy of this EAD when you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled "*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?*" for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By January 5, 2017, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD, which is January 5, 2017, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I–9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my Nicaraguan citizenship or proof that I have re-registered for TPS?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Nicaraguan citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. Refer to the "Note to Employees" section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

What happens after January 5, 2017, for purposes of employment authorization?

After January 5, 2017, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will work to issue new EADs to eligible TPS re-registrants who request them. These new EADs should have an expiration date of January 5, 2018, and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job before January 5, 2017, you and your employer should do the following:

1. For Section 1, you should:
   a. Check "An alien authorized to work;"
   b. Write the automatically extended EAD expiration date (January 5, 2017) in the first space; and
   c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).
2. For Section 2, employers should record the:
   a. Document title;
   b. Issuing authority;
   c. Document number; and
   d. Automatically extended EAD expiration date (January 5, 2017).

By January 5, 2017, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:
   a. Draw a line through the expiration date in the first space;
   b. Write "January 5, 2017" above the previous date;
   c. Write "TPS Ext." in the margin of Section 1; and
   d. Initial and date the correction in the margin of Section 1.
2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write "January 5, 2017" above the previous date;

c. Write "EAD Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By January 5, 2017, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By January 5, 2017, employment authorization must be reverified in Section 3. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, you may call USCIS at 888–897–7781 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of

Information Act can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing "How to Correct Your Records" from the menu on the right.

[FR Doc. 2016–11305 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0057]

Agency Information Collection Activities: Application of Certificate of Citizenship, Form N–600; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 2, 2016, at 81 FR 5476, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 15, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number 1615–0057.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0023 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application of Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information on Form N–600 to make a determination that the citizenship eligibility requirements and conditions are met by the applicant so that a certificate of citizenship can be generated.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–600 is 61,279 and the estimated hour burden per response is 1.8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public hour burden is 110,302 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual public cost burden is $7,506,678.

Dated: May 11, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–11483 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2582–16; DHS Docket No. USCIS–2014–0007]

RIN 1615–ZB52

Extension of the Designation of Honduras for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Honduras for Temporary Protected Status (TPS) for 18 months, from July 6, 2016 through January 5, 2018.

The extension allows currently eligible TPS beneficiaries to retain TPS through January 5, 2018, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because conditions in Honduras supporting its designation for TPS continue to be met.

Through this Notice, DHS also sets forth procedures necessary for eligible

nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EAD) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Honduras and whose applications have been granted. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria, and (2) all TPS eligibility criteria (including continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999).

For individuals who have already been granted TPS under Honduras' designation, the 60-day re-registration period runs from May 16, 2016 through July 15, 2016. USCIS will issue new EADs with a January 5, 2018, expiration date to eligible Honduras TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on July 5, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Honduras for 6 months, through January 5, 2017, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and the impact on Employment Eligibility Verification (Form I–9) and the E-Verify processes.

DATES: The 18-month extension of the TPS designation of Honduras is effective July 6, 2016, and will remain in effect through January 5, 2018. The 60-day re-registration period runs from May 16, 2016 through July 15, 2016. **Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. You can find specific information about Honduras' TPS extension by selecting "Honduras" from the menu on the left side of the TPS Web page.
- For questions concerning this Notice, you can also contact Jerry Rigdon, Chief of the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at 202–272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).
- When the Secretary terminates a country's TPS designation, although TPS benefits end, former TPS beneficiaries continue to hold any lawful immigration status they maintained or obtained while registered for TPS.

When and why was Honduras designated for TPS?

Following the destruction wrought by Hurricane Mitch, which struck Honduras in October of 1998, the Attorney General designated Honduras for TPS on January 5, 1999, on environmental disaster grounds. See *Designation of Honduras Under Temporary Protected Status,* 64 FR 524 (Jan. 5, 1999). The Secretary last announced an extension of Honduras' TPS designation on October 16, 2014, based on his determination that the conditions warranting the designation continued to be met. See *Extension of the Designation of Honduras for Temporary Protected Status,* 79 FR 62170 (Oct. 16, 2014). This announcement is the thirteenth extension of the TPS designation of Honduras since the original designation in 1999.

What authority does the Secretary have to extend the designation of Honduras for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

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[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

Why is the Secretary extending the TPS designation for Honduras through January 5, 2018?

DHS and the Department of State (DOS) have reviewed conditions in Honduras. Based on the reviews and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because conditions in Honduras supporting its designation for TPS persist. Hurricane Mitch and subsequent environmental disasters have substantially disrupted living conditions in Honduras, such that Honduras remains unable, temporarily, to adequately handle the return of its nationals.

In October 1998, Hurricane Mitch's 250 kilometer-per-hour winds and torrential rains impacted and damaged all of Honduras' 18 departments. The hurricane killed 5,657 people and displaced approximately 1.1 million people. The storm destroyed approximately 70 percent of the roads, housing, communication infrastructure, and the water and sanitation systems in Honduras. Damages from Hurricane Mitch in Honduras were estimated at more than $5 billion.

Although some of the destroyed infrastructure and housing has been rebuilt, Honduras continues to suffer the residual effects of the storm. The United Nations Development Programme has stated that Hurricane Mitch set Honduras back economically and socially by 20 years. Despite rebuilding efforts, Honduras still has a housing deficit of 1.1 million homes, with 400,000 families requiring a new home and 750,000 homes in need of improvement. Honduras is one of the poorest countries in the Western Hemisphere, with over 65 percent of the population living in poverty.

Since the last extension of Honduras' TPS designation, Honduras has experienced a series of environmental disasters that have exacerbated the persisting disruptions caused by Hurricane Mitch and significantly compromised the Honduran state's ability to adequately handle the return of its nationals. Additionally, climate fluctuations between heavy rainfall and prolonged drought continue to challenge recovery efforts. Toward the end of 2014, Honduras suffered damage from severe rains, landslides, and flooding, as well as from the heavy winds associated with Tropical Storm Hanna. Partially due to the heavy rainfall, Honduras saw a dramatic increase in mosquito-borne diseases, particularly dengue and chikungunya, in 2014 and 2015. The system of public hospitals is failing under this threat; in July 2015 the president of Honduras' medical school warned that public hospitals in Honduras were barely able to provide medicine for common illnesses, let alone an epidemic of chikungunya. In rural areas, the health care system does not have the capacity to meet the needs of the local population.

A prolonged regional drought, which began in the summer of 2014, has heavily affected Honduras, leading to significant crop losses in 2014 and 2015, massive layoffs in the agricultural sector, negative impacts on hygiene, and an increase in food insecurity and health risks. The agricultural sector has also continued to suffer from the impacts of a regional coffee rust epidemic, resulting in lost livelihoods and weakening Honduras' economy.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- Conditions supporting the designation of Honduras for TPS continue to be met. *See* INA section 244(b)(1)(B), (b)(3)(A) and (C), 8 U.S.C. 1254a(b)(1)(B), (b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in Honduras as a result of an environmental disaster. *See* INA section 244(b)(1)(B)(i), 8 U.S.C. 1254a(b)(1)(B)(i).
- Honduras continues to be unable, temporarily, to adequately handle the return of its nationals (or aliens having no nationality who last habitually resided in Honduras). *See* INA section 244(b)(1)(B)(ii), 8 U.S.C. 1254a(b)(1)(B)(ii).
- The designation of Honduras for TPS should be extended for an 18-month period from July 6, 2016 through January 5, 2018. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 57,000 current Honduras TPS beneficiaries who are expected to file for re-registration under the extension.

Notice of Extension of the TPS Designation of Honduras

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that conditions supporting Honduras' designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of TPS for Honduras for 18 months, from July 6, 2016 through January 5, 2018. *See* INA section 244(b)(2) and (b)(3), 8 U.S.C. 1254a(b)(2) and (b)(3).

Jeh Charles Johnson,
Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To register or re-register for TPS based on the designation of Honduras, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps*.
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765).

- If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. You do not need to pay this fee if you are under the age of 14 or are 66 or older.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765), regardless of your age, if you want an EAD.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EADs promptly. Filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* **Note:** Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Honduras, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Honduras, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When submitting a re-registration application and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA.

E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for Honduras TPS. Please mail your application to the mailing address listed in Table 1.

Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at *www.uscis.gov/tps* under "Honduras."

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through January 5, 2017?

Provided that you currently have TPS under the designation of Honduras, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras);
- Received an EAD under the last extension of TPS for Honduras; and
- Have an EAD with a marked expiration date of July 5, 2016, bearing the notation "A–12" or "C–19" on the face of the card under "Category."

Although this Notice automatically extends your EAD through January 5, 2017, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under "List A." You may present an acceptable receipt for a List A, List B, or List C document as described in the Employment Eligibility Verification (Form I–9) Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen, or damaged. If you present an acceptable receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of July 5, 2016, and states "A–12" or "C–19" under "Category," it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through January 5, 2017 (see the subsection titled "*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through January 5, 2017, based on your TPS. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through January 5, 2017. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of July 5, 2016, that state "A–12" or "C–19" under "Category" have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once July 5, 2016, is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). Your employer does not need to reverify your employment authorization on Form I–9 until January 5, 2017, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Form I–9, if he or she did not keep a copy of this EAD at the time you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled "*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?*" for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By January 5, 2017, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD, which is January 5, 2017, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I–9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my Honduran citizenship or proof that I have re-registered for TPS?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Honduran citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. Refer to the "Note to Employees" section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

What happens after January 5, 2017, for purposes of employment authorization?

After January 5, 2017, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will work to issue new EADs to eligible TPS re-registrants who request them. These new EADs should have an expiration date of January 5, 2018 and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job before January 5, 2017, you and your employer should do the following:

1. For Section 1, you should:

a. Check "An alien authorized to work;"

b. Write the automatically extended EAD expiration date (January 5, 2017) in the first space; and

c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).

2. For Section 2, employers should record the:

a. Document title;

b. Issuing authority;

c. Document number; and

d. Automatically extended EAD expiration date (January 5, 2017).

By January 5, 2017, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the first space;

b. Write "January 5, 2017" above the previous date;

c. Write "TPS Ext." in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write "January 5, 2017" above the previous date;

c. Write "EAD Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By January 5, 2017, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By January 5, 2017, employment authorization must be reverified in Section 3. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, you may call USCIS at 888–897–7781 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or State government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing "How to Correct Your Records" from the menu on the right.

[FR Doc. 2016–11306 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0087]

Agency Information Collection Activities: Application for Citizenship and Issuance of Certificate Under Section 322, Form N–600K; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 2, 2016, at 81 FR 5474, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 15, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number 1615–0087.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0019 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct

processing of such applications for citizenship under section 322 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–600K is 4,272 and the estimated hour burden per response is 2.0833 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,900 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $523,320.

Dated: May 11, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–11484 Filed 5–13–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–11]

60-Day Notice of Proposed Information Collection: Father's Day Survey

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Father's Day Survey.

OMB Approval Number: 2577–0116.

Type of Request: Reinstatement, without change, of a previously approved collection.

Form Number: HUD–57125.

Description of the need for the information and proposed use: Collection of information is necessary in order to determine how successful PHAs' events are. This information will be included in the Executive Summary.

Respondents (i.e. affected public): State, Local & Tribal Governments.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	400	1	400	1	400	$20	$8,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: May 9, 2016.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–11537 Filed 5–13–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5910–N–08]

60-Day Notice of Proposed Information Collection: Emergency Solutions Grant Data Collection

AGENCY: Office of Community Planning and Development, (HUD).

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice

is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–5015 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Emergency Solutions Grants Program Recordkeeping Requirements.

OMB Approval Number: 2506–0089.

Type of Request: Extension of currently approved collection.

Form Number:

Description of the need for the information and proposed use: This submission is to request an extension of a currently approved collection for the reporting burden associated with program and recordkeeping requirements that Emergency Solutions Grants (ESG) program recipients will be expected to implement and retain. This submission is limited to the recordkeeping burden under the ESG entitlement program. To see the regulations for the ESG program and applicable supplementary documents, visit the ESG page on the HUD Exchange at *https://www.hudexchange.info/programs/esg/*. The statutory provisions and the implementing interim regulations (also found at 24 CFR 576) that govern the program requiring these recordkeeping requirements.

Respondents (*i.e.*, affected public): ESG recipient and subrecipient lead persons.

Estimated Number of Respondents: The ESG record keeping requirements include 18 distinct activities. Each activity requires a different number of respondents ranging from 20 to 78,000. There are 78,000 unique respondents.

Estimated Number of Responses: 526,116.

Frequency of Response: Each activity also has a unique frequency of response, ranging from once annually to monthly.

Average Hours per Response: Each activity also has a unique associated number of hours of response, ranging from 15 minutes to 12 hours and 45 minutes.

Total Estimated Burdens: The total number of hours needed for all reporting is 367,441 hours.

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
A	B	C	D	E	F
576.100(b)(2) Emergency Shelter and Street Outreach Cap	360	1	360	1.0	360
576.400(a) Consultation with Continuums of Care	360	1	360	6.0	2,160
576.400(b) Coordination with other Targeted Homeless Services	2,360	1	2,360	8.0	18,880
576.400(c) System and Program Coordination with Mainstream Resources	2,360	1	2,360	16.0	37,760
576.400(d) Centralized or Coordinated Assessment	2,000	1	2,000	3.0	6,000
576.400(e) Written Standards for Determining the Amount of Assistance	808	1	808	5.0	4,040
576.400(f) Participation in HMIS	78,000	1	78,000	0.5	39,000
576.401(a) Initial Evaluation	50,000	1	30,000	1.0	30,000
576.401(b) Recertification	20,000	2	40,000	0.5	20,000
576.401 (d) Connection to Mainstream Resources	78,000	3	234,000	0.25	58,500
576.401(e) Housing retention plan	50,000	1	50,000	.75	37,500
576.402 Terminating Assistance	808	1	808	4.0	3,232
576.403 Habitability review	52,000	1	52,000	0.6	31,200
576.405 Homeless Participation	2,360	12	28,320	1.0	28,320
576.500 Recordkeeping Requirements	2,360	1	2,360	12.75	30,009
576.501(b) Remedial Actions	20	1	20	8	160
576.501(c) Recipient Sanctions	360	1	360	12	4,320
576.501(c) Subrecipient Response	2,000	1	2,000	8	16,000
Total	78,000		526,116		367,441

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 9, 2016.

Harriet Tregoning,

Principal Deputy Assistance Secretary for Community Planning and Development.

[FR Doc. 2016–11536 Filed 5–13–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.DF0000.LXSSH1050000.16XL1109AF; HAG 16–0087]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Southeast Oregon RAC will hold a public meeting Monday, June 13, 2016. The meeting begins at 8:00 a.m. and ends at 5:00 p.m. The agenda will be released online at *http://www.blm.gov/or/rac/seorrac.php* prior to June 1, 2016. Tentative agenda items for the meeting include: Lands with Wilderness Characteristics (LWC), Wilderness Study Areas (WSAs), targeted grazing, Sage-grouse plan implementation, national recreation strategy and more. Any other matters that may reasonably come before the Southeast Oregon RAC may also be addressed. Additionally, the RAC will tour examples of LWCs and WSAs located in the BLM Lakeview District on June 14, 2016. Southeast Oregon RAC LWC subcommittee will meet the morning of Wednesday, June 15, from 8:00 to noon in order to discuss issues pertinent to the subcommittee's intent.

A public comment period will be available during the meeting at a time to be determined. Unless otherwise approved by the Southeast Oregon RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the Southeast Oregon RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the Southeast Oregon RAC.

ADDRESSES: The meeting will be held at the Lakeview BLM offices, 1301 South G Street, Lakeview, OR 97630. The telephone conference line number for Monday and Wednesday is 1–866–524–6456, Participant Code: 608605.

FOR FURTHER INFORMATION CONTACT: Larry Moore, Public Affairs Specialist, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or *l2moore@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon. This meeting is open to the public in its entirety. Information to be distributed to the Southeast Oregon RAC is requested prior to the start of each meeting.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Shanes DeForest,

Vale Associate District Manager.

[FR Doc. 2016–11326 Filed 5–13–16; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–995]

Certain Electrical Conductor Composite Cores and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 8, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of CTC Global Corporation of Irvine, California. An amended complaint was filed on April 26, 2016. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrical conductor composite cores and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,211,319 ("the '319 patent") and U.S. Patent No. 7,368,162 ("the '162 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 10, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electrical conductor composite cores and components thereof by reason of infringement of one or more of claims 1, 3–6, 9, 12–15, 20–23, 25–27, 29, 30, 36, 38, 44, 52, 59–62, 64–67, and 69–71 of the '319 patent and claims 1–3, 8–10, 20, 21, 26, 27, 29, 33–37, 51, 58, and 63–65 of the '162 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: CTC Global Corporation, 2026 McGaw Avenue, Irvine, CA 92614,

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mercury Cable & Energy, Inc., 30448 Rancho Viejo Road, Suite 200, San Juan Capistrano, CA 92675
Shenzhen Zm Hesheng Power Development, Co., Ltd., Rm. 1518 Pengji Wisdom, 50# Bagualing, Futian Shenzhen China 61436608

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–11446 Filed 5–13–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production, DN 3147;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Immersion Corporation. on May 10, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production. The complaint names as respondents CJ CheilJedang Corp. of Korea; CJ America, Inc. of Downers Grove, IL; and PT CheilJedang Indonesia of Indonesia. The complainant requests that the Commission issue an exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3147") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4].) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–11481 Filed 5–13–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–996]

Certain Quartz Slabs and Portions Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 14, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cambria Company LLC of Belle Plaine, Minnesota. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain quartz slabs and portions thereof by reason of infringement of the claims of U.S. Patent No. D712,670 ("the '670 patent"); U.S. Patent No. D713,154 ("the '154 patent"); U.S. Patent No. D737,058 ("the '058 patent"); U.S. Patent No. D737,576 ("the '576 patent"); U.S. Patent No. D737,577 ("the '577 patent"); and U.S. Patent No. D738,630 ("the '630 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 10, 2016, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain quartz slabs and portions thereof by reason of infringement of the claim of the '670 patent; the claim of the '154 patent; the claim of the '058 patent; the claim of the '576 patent; the claim of the '577 patent; and the claim of the '630 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Cambria Company LLC, 805 Enterprise Drive East, Suite H, Belle Plaine, MN 56011.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Wilsonart LLC, 2501 Wilsonart Drive, Temple, TX 76504.

Dorado Soapstone LLC, 940 South Jason Street, Unit 9, Denver, CO 80223.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

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[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–11448 Filed 5–13–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Organix, Inc.

ACTION: Notice of registration.

SUMMARY: Organix, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Organix, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated November 27, 2015, and published in the **Federal Register** on December 3, 2015, 80 FR 75691, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Organix, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Heroin (9200)	I
Lysergic acid diethylamide (7315)	II
Morphine (9300)	II

The company plans to manufacture reference standards for distribution to its research and forensics customers. In reference to drug codes 7360 (marihuana) and 7370 (THC) the company plans to manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Dated: May 9, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–11393 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Johnson Matthey Pharmaceutical Materials, Inc.

ACTION: Notice of registration.

SUMMARY: Johnson Matthey Pharmaceutical Materials, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Johnson Matthey Pharmaceutical Materials, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated November 30, 2015, and published in the **Federal Register** on December 8, 2015, 80 FR 76311, Johnson Matthey Pharmaceutical Materials, Inc., 25 Patton Road, Devens, Massachusetts 01434 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Pharmaceutical Materials, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Hydrocodone (9193)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to its customers.

Dated: May 9, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–11394 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Siegfried USA, LLC

ACTION: Notice of registration.

SUMMARY: Siegfried USA, LLC applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Siegfried USA, LLC registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 11, 2016, and published in the **Federal Register** on January 19, 2016, 81 FR 2910, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070 applied to be registered as an importer of certain basic classes of controlled substances. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Siegfried USA, LLC to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture bulk active pharmaceutical ingredients (API) for distribution to its customer.

Dated: April 28, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–11414 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: AMRI Rensselaer, Inc.

ACTION: Notice of registration.

SUMMARY: AMRI Rensselaer, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants AMRI Rensselaer, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated November 30, 2015, and published in the **Federal Register** on December 8, 2015, 80 FR 76312, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of AMRI Rensselaer, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333).	II
Meperidine (9230)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug codes 7360 (marihuana), and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activity for these drug codes are authorized for this registration.

Dated: April 28, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–11392 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Johnson Matthey, Inc.

ACTION: Notice of registration.

SUMMARY: Johnson Matthey, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Johnson Matthey, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated December 9, 2015, and published in the **Federal Register** on December 17, 2015, 80 FR 78765, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: April 28, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–11415 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 4, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of New Jersey in the lawsuit entitled *United States* v. *Parkway Iron and Metal Co., Inc.,* Civil Action No. 2:16–cv–02515.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of the Clean Air Act provisions governing emission of ozone depleting substances at the defendant's scrap metal recycling facility in Clifton, New Jersey. The consent decree requires the defendant to perform injunctive relief, pay a $145,000 civil penalty, and complete a supplemental environmental project that will cost approximately $260,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Parkway Iron and Metal Co., Inc,* D.J. Ref. No. 90–5–2–1–10979. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–11420 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 3, 2016, the Department of Justice lodged a proposed Settlement Agreement with the United States District Court for the Virgin Islands, Bankruptcy Division in *In re Caribbean Auto Mart of St. Croix, Inc.,* Case No. 1:13–bk–10003. The proposed Settlement Agreement resolves the proof of claim filed by the United States for recovery of environmental response costs incurred under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.,* at the TC Waste Oil Superfund Site in St. Croix. Under the proposed Settlement Agreement, the United States is provided an allowed general unsecured claim of $423,448.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Caribbean Auto Mart of St. Croix, Inc.,* D.J. Ref. No. 90–11–3–10248/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–11419 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 3, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Virgin Islands, Bankruptcy Division in *United States* v. *CAG*

International, Inc., Case No. 1:16–cv–00023. In this action bought under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, the United States seeks to recover environmental response costs incurred at the TC Waste Oil Superfund Site in St. Croix. Under the proposed Consent Decree, CAG International, Inc. will reimburse EPA $137,500 to resolve the company's liability related to the Site.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer *United States* v. *CAG International, Inc.*, D.J. Ref. No. 90–11–3–10248/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–11418 Filed 5–13–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. Sec. 552b)

I, J. Patricia W. Smoot, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:00 p.m., on Wednesday, May 11, 2016 at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss two original jurisdiction cases pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: J. Patricia W. Smoot, Patricia Cushwa and Charles T. Massarone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: May 11, 2016.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2016–11588 Filed 5–12–16; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Equal Employment Opportunity in Apprenticeship Programs

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Equal Employment Opportunity in Apprenticeship Programs," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 15, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1205-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Equal Employment Opportunity in Apprenticeship Programs information collection. Regulations 29 CFR part 30 sets forth policies and procedures to promote equal opportunity in apprenticeship programs registered with the DOL and recognized State Apprenticeship Agencies. This information collection also includes the requirements for a person who believes his or her rights under part 30 have been violated to a complaint, Form ETA–9039. National Apprenticeship Act of 1937 section 1 authorizes this information collection. *See* 29 U.S.C. 50.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0224.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 17, 2015 (80 FR 78772).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0224. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Equal Employment Opportunity in Apprenticeship Programs.

OMB Control Number: 1205–0224.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 22,527.

Total Estimated Number of Responses: 34,490.

Total Estimated Annual Time Burden: 3,219 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: May 9, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–11462 Filed 5–13–16; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before June 15, 2016.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2016–011–C.

Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania 16201.

Mine: Tom's Run Mine, MSHA I.D. No. 36–08525, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.35(a)(5)(i) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 480-volt trailing cables with a maximum length of 1100 feet when No. 2 American Wire Gauge (AWG) cable is used on DBT roof bolters. The petitioner states that:

(1) The trailing cables for the 480-volt DBT bolters will not be smaller than No. 2 AWG cable.

(2) All circuit breakers used to protect the No. 2 AWG trailing cable exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 714 amperes +/− 5%. The trip setting of these circuit breakers will be sealed to ensure that the settings on these breakers cannot be changed, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the cables as listed above.

(3) Replacement circuit breakers and/or instantaneous trip units used to protect the No. 2 AWG trailing cable will be calibrated to trip at 714 amperes +/− 5%, and they will be sealed.

(4) All components that provide short-circuit protection will have a sufficient interruption rating in accordance with

the maximum calculated fault currents available.

(5) During each production day, the trailing cables and the circuit breakers will be examined in accordance with all 30 CFR provisions.

(6) Permanent warning labels will be installed and maintained on the load center identifying the location of each short-circuit protection device. These labels will warn miners not to change or alter the settings of these devices.

(7) If the affected trailing cables are damaged in any way during the shift, the cable will be de-energized and repairs made.

(8) The alternative method will not be implemented until all miners who have been designated to operate the bolters, or any other person designated to examine the trailing cables or trip settings on the circuit breakers, have received the proper training as to the performance of their duties.

(9) Within 60 days after the proposed decision and order becomes final, the petitioner will submit proposed revisions for their approved 30 CFR part 48 training plans to the District Manager. These revisions will specify task training for miners designated to examine the trailing cables for safe operating condition and verify that the short-circuit settings of the circuit-interrupting devices that protect the affected trailing cables do not exceed the settings specified previously in this petition. The training will include the following elements:

(a) The hazards of setting short-circuit interrupting device(s) too high to adequately protect the trailing cables.

(b) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

(c) Mining methods and operating procedures that will protect the trailing cables against damage.

(d) Proper procedures for examining the trailing cables to ensure that the cables are in safe operating condition by visually inspecting the entire cable, observing the insulation, the integrity of splices, nicks and abrasions.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–11433 Filed 5–13–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; correction.

SUMMARY: This notice amends a petition for modification published in the **Federal Register** on April 13, 2016, for the Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25193.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

Correction

This notice corrects the Mine and Mine I.D. No. in the notice. The Mine and Mine I.D. No. referenced in the April 13, 2016 **Federal Register** notice on page 21905, Docket Number M–2016–009–C, was listed as Marsh Fork Mine, MSHA I.D. No. 46–08551. The correct mine name is Marsh Fork Preparation Plant, and the correct Mine I.D. No. is 46–08374.

The petitioner requests a modification of the existing safety standard 30 CFR 77.214(a) to permit an alternative method for backfilling and reclamation of the abandoned portal area mine openings associated with the abandoned Marsh Fork Mine, MSHA I.D. No. 46–08551, using coal refuse as the backfill material. The petitioner specifically requests approval to backfill four abandoned mine openings associated with inactive Marsh Fork Mine, Cedar Grove coal seam portal area with coal refuse.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–11434 Filed 5–13–16; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 19, 2016.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Corporate Stabilization Fund Quarterly Report.
2. Board Briefing, Call Report Modernization.

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2016–11599 Filed 5–12–16; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Request for comment notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on the NSF Proposal and Award Policies and Procedures Guide (PAPPG). The primary purpose of this revision is to update revise the PAPPG to incorporate a number of policy-related changes.

The draft NSF PAPPG is now available for your review and consideration on the NSF Web site at *http://www.nsf.gov/bfa/dias/policy/.* To facilitate review, revised text has been highlighted in yellow throughout the document to identify significant changes. A brief comment explanation of the change also is provided.

After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

In addition to the type of comments identified above, comments also are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by July 15, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* The draft NSF Proposal and Award Policies and Procedures Guide may be found at: *http://www.nsf.gov/bfa/dias/policy/.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide".

OMB Approval Number: 3145–0058.

Expiration Date of Approval: October 31, 2018.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Public Law 81–507) sets forth NSF's mission and purpose:

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . ."

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects, and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 50,000 proposals are expected during the course of one year for a total of 6,000,000 public burden hours annually.

Dated: May 11, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–11466 Filed 5–13–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATES: May 16, 23, 30; June, 6, 13, 20, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of May 16, 2016

Tuesday, May 17, 2016

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting), (Contact: Kevin Witt: 301–415–2145)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, May 19, 2016

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)
1:30 p.m. Briefing on Security Issues (Closed Ex. 1)

Week of May 23, 2016—Tentative

There are no meetings scheduled for the week of May 23, 2016.

Week of May 30, 2016—Tentative

Wednesday, June 1, 2016

9:00 a.m. Briefing on Security Issues (Closed Ex. 1)

Thursday, June 2, 2016

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting), (Contact: Andrew Waugh: 301–415–5601)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

2:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 & 6)

Week of June 6, 2016—Tentative

There are no meetings scheduled for the week of June 6, 2016.

Week of June 13, 2016—Tentative

There are no meetings scheduled for the week of June 13, 2016.

Week of June 20, 2016—Tentative

Monday, June 20, 2016

9:00 a.m. Meeting with Department of Energy Office of Nuclear Energy (Public Meeting), (Contact: Albert Wong: 301–415–3081)

Thursday, June 23, 2016

9:00 a.m. Discussion of Security Issues (Closed Ex. 3)

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: May 11, 2016.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–11570 Filed 5–12–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–043; NRC–2010–0215]

PSEG Power, LLC and PSEG Nuclear LLC; PSEG Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Early site permit and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued early site permit (ESP) number ESP–005 to PSEG Power, LLC and PSEG Nuclear, LLC (PSEG). In addition, the NRC has prepared a summary Record of Decision (ROD) that supports the NRC's decision to issue ESP No. ESP–005.

DATES: ESP No. ESP–005 became effective on May 5, 2016.

ADDRESSES: Please refer to Docket ID NRC–2010–0215 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0215. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents,*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this notice entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Prosanta Chowdhury, telephone: 301–415–1647, email: *Prosanta.Chowdhury@nrc.gov* regarding safety matters, or Allen Fetter, telephone: 301–415–8556, email: *Allen.Fetter@nrc.gov* regarding environmental matters. Both are staff members of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under Section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of ESP No. ESP–005 to the Permittee, and under 10 CFR 50.102(c), the NRC is providing notice that the ROD has been issued. With respect to the ESP application filed by PSEG, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, (AEA) and the Commission's regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the site is in conformity with the permit, the provisions of the AEA, and the Commission's regulations. Furthermore, the NRC finds that the Permittee is technically qualified to engage in the activities authorized, and that issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public. Finally, the NRC finds that the findings required by subpart A of 10 CFR part 51 have been made.

Accordingly, the ESP was issued on May 5, 2016, and became effective immediately.

II. Further Information

The NRC has prepared a final safety evaluation report (FSER) and final environmental impact statement (FEIS) that document the information reviewed and the NRC's conclusions. The Atomic Safety and Licensing Board (ASLB) issued its Initial Decision on April 26, 2016, following the March 24, 2016, mandatory hearing on the staff's review, authorizing the NRC staff to issue to PSEG an ESP for the PSEG Site. The ASLB's Initial Decision constitutes the NRC's ROD. The NRC also prepared a document summarizing the ROD to accompany its actions on the ESP application; this Summary ROD incorporates by reference materials contained in the FEIS. The FSER, FEIS, Summary ROD, and accompanying documentation included in the ESP package, as well as the ASLB Initial Decision, are available online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's ADAMS, which provides text and image files of NRC's public documents.

III. Availability of Documents

The documents identified in the following table are available to interested persons through the ADAMS Public Documents collection. A copy of the early site permit application is also available for public inspection at the NRC's PDR and at *http://www.nrc.gov/reactors/new-reactors/esp.html.*

Document	ADAMS Accession No.
Final Safety Evaluation Report for an Early Site Permit at the PSEG Site	ML15229A119
Final Environmental Impact Statement for an Early Site Permit at the PSEG Site	ML15176A444
Atomic and Safety Licensing Board's Initial Decision following mandatory hearing (ROD)	ML16117A383
Summary Record of Decision	ML16056A490

Document	ADAMS Accession No.
Letter transmitting Early Site Permit number ESP–005 and accompanying documentation	ML16084A780
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Dated at Rockville, Maryland, this 10th day of May 2016.

For the Nuclear Regulatory Commission.

Mark Delligatti,

Deputy Director, Division of New Reactor Licensing, Office of New Reactors.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77794; File No. SR–ISE–2016–11]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction Involving Its Indirect Parent

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2016 International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes is hereby filing with the U.S. Securities and Exchange Commission ("Commission") a proposed rule change (the "Proposed Rule Change") in connection with a proposed business transaction (the "Transaction") involving the Exchange's ultimate, indirect, non-U.S. upstream owners, Deutsche Börse AG ("Deutsche Börse") and Eurex Frankfurt AG ("Eurex Frankfurt"), and Nasdaq, Inc. ("Nasdaq"). Nasdaq is the parent company of The NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ PHLX LLC ("Phlx Exchange"), NASDAQ BX, Inc. ("BX Exchange"), Boston Stock Exchange Clearing Corporation ("BSECC") and Stock Clearing Corporation of Philadelphia ("SCCP").[3] Upon completion of the Transaction (the "Closing"), the Exchange's indirect parent company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), will become a direct subsidiary of Nasdaq. The Exchange will therefore become an indirect subsidiary of Nasdaq and, in addition to the Exchange's current affiliation with ISE Gemini, LLC ("ISE Gemini") and ISE Mercury, LLC ("ISE Mercury"), an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. Nasdaq will become the ultimate parent of the Exchange.[4]

In order to effect the Transaction, the Exchange hereby seeks the Commission's approval of the following: (i) That certain corporate resolutions that were previously established by entities that will cease to be non-U.S. upstream owners of the Exchange after the Transaction will cease to be considered rules of the Exchange upon Closing; (ii) that certain governing documents of Nasdaq will be considered rules of the Exchange upon Closing; (iii) that the Third Amended and Restated Trust Agreement (the "Trust Agreement") that currently exists among International Securities Exchange Holdings, Inc. ("ISE Holdings"), U.S. Exchange Holdings, and the Trustees (as defined therein) with respect to the "ISE Trust" will cease to be considered rules of the Exchange upon Closing and, thereafter, that the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust; (iv) to amend and restate the Second Amended and Restated Certificate of Incorporation of ISE Holdings ("ISE Holdings COI") to eliminate provisions relating to the Trust Agreement and the ISE Trust and, in this respect, to reinstate certain text of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings; (v) to amend and restate the Second Amended and Restated Bylaws of ISE Holdings (the "ISE Holdings Bylaws") to waive certain voting and ownership restrictions in the ISE Holdings COI to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction; and (vi) to amend and restate the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings COI") to eliminate references therein to the Trust Agreement.

The Exchange requests that the Proposed Rule Change become operative at the Closing of the Transaction. The text of the proposed rule change is available at the Commission's Public Reference Room and on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of various changes to the organizational and governance documents of the Exchange's current owners and related actions that are necessary in connection with the Closing of the Transaction, as described below. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.[5] The Exchange would continue to be registered as a national securities exchange, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of NASDAQ Exchange, Phlx Exchange and BX Exchange as well as from its current affiliates, ISE Gemini and ISE Mercury. Neither the Exchange nor its current affiliates engage in clearing securities transactions, nor would they do so after the Transaction. Additionally, the Exchange would continue to be a separate self-regulatory organization ("SRO").

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[4] The Exchange's current affiliates, ISE Gemini and ISE Mercury, have submitted nearly identical proposed rule changes. *See* SR–ISEGemini–2016–05 and SR–ISEMercury–2016–10.

1. Current Ownership Structure of the Exchange

On December 17, 2007, ISE Holdings, the sole, direct parent of the Exchange, became a direct, wholly-owned subsidiary of U.S. Exchange Holdings.[6] U.S. Exchange Holdings is 85% directly owned by Eurex Frankfurt and 15% directly owned by Deutsche Börse. Eurex Frankfurt is a wholly-owned, direct subsidiary of Deutsche Börse.[7] Deutsche Börse therefore owns 100% of U.S. Exchange Holdings through its aggregate direct and indirect ownership.

2. The Transaction

On March 9, 2016, a Stock Purchase Agreement (the "Agreement") was entered into among Deutsche Börse, Eurex Frankfurt and Nasdaq. Pursuant to and subject to the terms of the Agreement, at the Closing, Deutsche Börse and Eurex Frankfurt will sell, transfer and deliver to Nasdaq, and Nasdaq will purchase, the capital stock of U.S. Exchange Holdings.

3. Post-Closing Ownership Structure of the Exchange

As a result of the Transaction, Nasdaq will directly own 100% of the equity interest of U.S. Exchange Holdings. U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will remain the sole, direct owner of the Exchange. The Exchange will therefore become an indirect subsidiary of Nasdaq and Nasdaq will become the ultimate parent of the Exchange. The Exchange will become an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. As a result of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be owners of the Exchange. The Exchange will therefore cease to have any Non-U.S. Upstream Owners. The Transaction will not have any effect on ISE Holdings' direct ownership of the Exchange. However, consummation of the Transaction is subject to approval of this Proposed Rule Change by the Commission, as described below.

4. Non-U.S. Upstream Owner Resolutions

Deutsche Börse and Eurex Frankfurt, as the Non-U.S. Upstream Owners of the Exchange, have previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange. Specifically, each of such Non-U.S. Upstream Owners has adopted resolutions ("Non-U.S. Upstream Owner Resolutions"), which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.[8] For example, the resolution of each of such Non-U.S. Upstream Owners provides that it shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange. In addition, the resolution of each of such Non-U.S. Upstream Owners provides that the board members, including each person who becomes a board member, would so consent to comply and cooperate and the particular Non-U.S. Upstream Owner would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate, to the extent that he or she is involved in the activities of the Exchange.

Section 19(b) of the Act,[9] and Rule 19b–4 thereunder,[10] require an SRO to file proposed rule changes with the Commission. Although the Non-U.S. Upstream Owners are not SROs, the Non-U.S. Upstream Owner Resolutions have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[11] As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange after the Transaction, the Exchange proposes that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[12]

5. Nasdaq Governing Documents

Nasdaq will become the ultimate parent of the Exchange upon the Closing of the Transaction. As described above, Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the Exchange's existing U.S. upstream owners are not SROs, their governing documents have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[13] The Exchange proposes that the Nasdaq Amended and Restated Certificate of Incorporation ("Nasdaq COI") and the Nasdaq Bylaws ("Nasdaq Bylaws, and together with the Nasdaq COI, the "Nasdaq governing documents") will become stated policies, practices, or interpretations of the Exchange as of the Closing and, therefore, will be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[14]

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[5] If the Exchange determines to make any such changes, it will seek the approval of the Commission only after the approval of this Proposed Rule Change to the extent required by the Securities Exchange Act of 1934, as amended ("Act"), the Commission's rules thereunder, or the Exchange's rules.

[6] *See* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

[7] *See* Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (SR–ISE–2012–21). Each of Deutsche Börse and Eurex Frankfurt is referred to as a "Non-U.S. Upstream Owner" and collectively as the "Non-U.S. Upstream Owners."

[8] *See* SR–ISE–2007–101, *supra* note 6; SR–ISE–2012–21, *supra* note 7.

[9] 15 U.S.C. 78s(b).

[10] 17 CFR 240.19b–4.

[11] *See* SR–ISE–2007–101, *supra* note 6 at 71981.

[12] The "Form of German Parent Corporation Resolutions" is attached hereto as Exhibit 5A. As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of Deutsche Börse and Eurex Frankfurt also would cease accordingly. Resolution 11 provides that, notwithstanding any provision of the resolutions, before: (a) Any amendment to or repeal of any provision of this or any of the resolutions; or (b) any action that would have the effect of amending or repealing any provision of the resolutions shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. In addition, Deutsche Börse, Eurex Frankfurt, U.S. Exchange Holdings, ISE Holdings, and the Exchange previously became parties to an agreement to provide for adequate funding for the Exchange's regulatory responsibilities. ISE Gemini and ISE Mercury subsequently became parties to the agreement. This agreement will be terminated upon the Closing of the Transaction.

[13] *See* SR–ISE–2007–101, *supra* note 6 at 71981.

The Nasdaq Bylaws contain certain provisions regarding ownership, jurisdiction, books and records, and other issues, with respect to Nasdaq, as well as its board members, officers, employees, and agents (as applicable), relating to Nasdaq's control of any "Self-Regulatory Subsidiary" (*i.e.*, any subsidiary of Nasdaq that is an SRO as defined under Section 3(a)(26) of the Act).[15] The Exchange would be a "Self-Regulatory Subsidiary" of Nasdaq upon the Closing of the Transaction. The provisions in the Nasdaq Bylaws are comparable to the provisions of the Non-U.S. Upstream Owners Resolutions, including in the following manner:

- Giving due regard to the preservation of the independence of the self-regulatory function of each of Nasdaq's Self-Regulatory Subsidiaries.[16]
- Maintaining the confidentiality of all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that comes into Nasdaq's possession, which shall not be used for any non-regulatory purposes; making such books and records available for inspection and copying by the Commission; and maintaining such books and records relating to each Self-Regulatory Subsidiary in the United States.[17]
- To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of Nasdaq shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[18]
- Compliance by Nasdaq with the U.S. federal securities laws and the rules and regulations thereunder, cooperation by Nasdaq with the Commission and Nasdaq's Self-Regulatory Subsidiaries, and reasonable steps by Nasdaq necessary to cause its agents to cooperate with the Commission and, where applicable, the Self-Regulatory Subsidiaries pursuant to their regulatory authority.[19]
- Consent by Nasdaq and its officers, Directors, and employees to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary.[20]
- Reasonable steps by Nasdaq necessary to cause its current and future officers, Directors, and employees, to consent in writing to the applicability to them of certain provisions of the Nasdaq Bylaws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary.[21]
- Approval by the Commission under Section 19 of the Act prior to any resolution of the Nasdaq Board to approve an exemption for any person from the ownership limitations of the Nasdaq COI.[22]
- Filing with, or filing with and approval by, the Commission (as the case may be) under Section 19 of the Act prior to amending the Nasdaq COI or the Nasdaq Bylaws.[23]

The Exchange believes that the provisions in the Nasdaq Bylaws should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.[24]

Additionally, and similar to the ISE Holdings COI, the Nasdaq COI imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes of Nasdaq in excess of 5% of the securities generally entitled to vote may vote the shares in excess of 5%.[25] This limitation would mitigate the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchange, and it facilitates the Exchange's and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board may approve exemptions from the 5% voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,[26] provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its SRO subsidiary.[27] Further, any such exemption from the 5% voting limitation would not be effective until approved by the Commission pursuant to Section 19 of the Act.[28]

6. Trust Agreement [29]

The ISE Holdings COI currently contains certain ownership limits

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[14] The Nasdaq COI dated January 24, 2014 is attached hereto as Exhibit 5B along with subsequent amendments thereto dated November 17, 2014 and September 8, 2015 and the Certificate of Elimination of the Series A Convertible Preferred Stock dated January 27, 2014. The Nasdaq Bylaws are attached hereto as Exhibit 5C.

[15] 15 U.S.C. 78c(a)(26).

[16] Nasdaq Bylaws Section 12.1(a) (Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries).

[17] Nasdaq Bylaws Section 12.1(b).

[18] Nasdaq Bylaws Section 12.1(c).

[19] Nasdaq Bylaws Section 12.2(a) (Cooperation with the Commission). The officers, Directors, and employees of Nasdaq, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and the self-regulatory functions and responsibilities of the Self-Regulatory Subsidiaries. Nasdaq Bylaws Section 12.2(b).

[20] Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

[21] Nasdaq Bylaws Section 12.4 (Further Assurances).

[22] Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

[23] Nasdaq Bylaws Section 12.6 (Amendments to the Certificate of Incorporation); Nasdaq Bylaws Section 11.3 (Review by Self-Regulatory Subsidiaries).

[24] The U.S. Exchange Holdings COI also includes similar provisions, including that U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the "Ownership Limit" and the "Voting Limit." *See* U.S. Exchange Holdings COI, Articles TENTH through SIXTEENTH. The U.S. Exchange Holdings COI provides that U.S. Exchange Holdings will notify the Exchange's Board if any "Person," either alone or together with its "Related Persons," at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares of U.S. Exchange Holdings. *See* SR–ISE–2007–101, *supra* note 6, at 71981.

[25] *See* Article FOURTH, Section C of the Nasdaq COI.

[26] 15 U.S.C. 78c(a)(39).

[27] *See* Article FOURTH, Section C.6. of the Nasdaq COI. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to an facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

[28] *See* Section 12.5 of the Nasdaq Bylaws.

[29] The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein). By its terms, the Trust Agreement originally related solely to ISE Holdings'

Continued

("Ownership Limits") and voting limits ("Voting Limits") with respect to the outstanding capital stock of ISE Holdings.[30] The Trust Agreement was entered into in 2007 to provide for an automatic transfer of ISE Holdings shares to a trust (the "ISE Trust") if a Person[31] were to obtain an ownership or voting interest in ISE Holdings in excess of these Ownership Limits and Voting Limits, through ownership of one of the Non-U.S. Upstream Owners, without obtaining the approval of the Commission. In this regard, the Trust Agreement serves four general purposes: (i) To accept, hold and dispose of Trust Shares[32] on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event[33] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;[34] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary[35] as provided in Section 4.2(h) therein. The ISE Trust, and corresponding Trust Agreement, is the mechanism by which the Ownership Limits and Voting Limits in the ISE Holdings COI currently would be protected in the event that a Non-US Upstream Owner purportedly transfers any related ownership or voting rights other than in accordance with the ISE Holdings COI.

As described above, Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, the Trust Agreement has previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore is considered rules of the Exchange.[36] The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (*e.g.,* U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange proposes that the Trust Agreement will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[37] The Exchange also proposes that, as of the Closing of the Transaction, the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

7. ISE Holdings COI

The ISE Holdings COI was amended in 2007 in relation to the ownership of the Exchange by Deutsche Börse.[38] At that time, provisions were added to the ISE Holdings COI relating to the ISE Trust to provide for an automatic transfer of ISE Holdings' shares to the ISE Trust if a Person were to obtain an ownership or voting interest in ISE Holdings in excess of Voting Limits and Ownership Limits, without obtaining the approval of the Commission.

As described above, the Exchange is proposing that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction. Accordingly, the Exchange proposes to remove provisions relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.[39] The Exchange proposes to reinstate certain provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.[40]

The changes to the ISE Holdings COI proposed herein would describe the corrective treatment of "Excess Shares" (*i.e.,* any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits). The proposed changes would apply

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ownership of ISE, and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. In 2010, the Commission approved proposed rule changes that revised the Trust Agreement to replace references to ISE with references to any Controlled National Securities Exchange. *See* Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) and 61498 (February 4, 2010), 75 FR 7299 (February 18, 2010) (SR–ISE–2009–90); see also ISE Trust Agreement, Articles I and II, Sections 1.1 and 2.6. Thus, the ISE Trust Agreement also applies to ISE Gemini and ISE Mercury.

[30] *See* Article FOURTH, Section III of the ISE Holdings COI.

[31] *See* SR–ISE–2007–101, *supra* note 6. Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

[32] Under the Trust Agreement, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be. The term "Excess Shares" means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the ISE Holdings COI, through, for example, ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term "Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[33] Under the Trust Agreement, the term "Material Compliance Event" means, with respect to a Non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions (*i.e.,* as referenced in note 7) in any material respect.

[34] Under the Trust Agreement, the term "Call Option" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[35] Under the Trust Agreement, the term "Trust Beneficiary" means U.S. Exchange Holdings.

[36] *See* SR–ISE–2007–101, *supra* note 6 at 71984.

[37] The current Trust Agreement is attached hereto as Exhibit 5D. Section 8.2 of the Trust Agreement provides, in part, that, for so long as ISE Holdings controls, directly or indirectly, the Exchange, before any amendment or repeal of any provision of the Trust Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of the Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. The Exchange notes that, according to the terms of the Trust Agreement, Sections 6.1 and 6.2 thereof, which relate to limits on disclosure of confidential information and certain permitted disclosure, will survive the termination of the Trust Agreement for a period of ten years.

[38] *See* SR–ISE–2007–101, *supra* note 6.

[39] The proposed, amended ISE Holdings COI is attached hereto as Exhibit 5E. Capitalized terms used to describe the ISE Holdings COI that are not otherwise defined herein shall have the meanings prescribed in the ISE Holdings COI. Article FOURTEENTH of the ISE Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the ISE Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[40] *See, e.g.,* Exhibit 5A to SR–ISE–2007–101, *supra* note 6. *See also* Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR–ISE–2004–29), through which the Exchange, which was organized as a corporation at that time (*i.e.,* "ISE, Inc."), amended its Certificate of Incorporation and Constitution at that time in connection with the Exchange's then-contemplated initial public offering. The Exchange subsequently reorganized into a holding company structure, whereby it became a limited liability company, as it is so organized currently, and whereby ISE Holdings became the sole owner of the Exchange. *See* Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR–ISE–2006–04). As a result, and at the time of the reorganization, the Exchange eliminated the "ISE, Inc." Certificate of Incorporation and Constitution. The ISE Holdings COI and ISE Holdings Bylaws were introduced at that time and included substantially the same ownership and voting limitations that had been contained in the ISE, Inc. Certificate of Incorporation and Constitution.

corrective procedures if any Person, alone or together with its Related Persons, purports to sell, transfer, assign or pledge any shares of ISE Holdings stock in in violation of the Ownership Limits. Specifically, any such sale, transfer, assignment or pledge would be void, and that number of shares in excess of the Ownership Limits would be deemed to have been transferred to ISE Holdings, as "Special Trustee" of a "Charitable Trust" for the exclusive benefit of a "Charitable Beneficiary" to be determined by ISE Holdings.[41] These corrective procedures also would apply if there is any other event causing any holder of ISE Holdings stock to exceed the Ownership Limits, such as a repurchase of shares by ISE Holdings. The automatic transfer would be deemed to be effective as of the close of business on the business day prior to the date of the violative transfer or other event. The Special Trustee of the Charitable Trust would be required to sell the Excess Shares to a person whose ownership of shares is not expected to violate the Ownership Limits, subject to the right of ISE Holdings to repurchase those shares. The proposed changes to the ISE Holdings COI are as follows:[42]

- The Exchange proposes to delete the current provisions in Article Fourth, Sections III(a)(ii), III(a)(iii) and III(b)(i) of the ISE Holdings COI that provide that the ISE Holdings Board of Directors shall deliver to the ISE Trust copies of certain written notice and updates thereto currently required under Sections III(a)(ii) and III(a)(iii) of Article FOURTH (*i.e.*, if any Person at any time owns, of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then outstanding Voting Shares).
- The Exchange proposes to adopt new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, which would provide that, notwithstanding any other provisions contained in the ISE Holdings COI, to the fullest extent permitted by applicable law, any shares of capital stock of ISE Holdings (whether such shares are common stock or preferred stock) not entitled to be voted due to the restrictions set forth in Section III(b)(i) of Article FOURTH of the ISE Holdings COI (and not waived by the ISE Holdings Board of Directors and approved by the Commission pursuant to Section III(b)(i) of Article FOURTH of the ISE Holdings COI), shall not be deemed to be outstanding for purposes of determining a quorum or a minimum vote required for the transaction of any business at any meeting of stockholders of ISE Holdings, including, without limitation, when specified business is to be voted on by a class or a series voting as a class.
- As a result of the addition of new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, the Exchange proposes to renumber current Article FOURTH, Section III(b)(iii) as resulting Article FOURTH, Section III(b)(iv).
- The Exchange proposes several changes to Article FOURTH, Section III(c) of the ISE Holdings COI, which relates to violations of any Ownership Limits or Voting Limits and the treatment of Excess Shares, including the following:
- Addition of new text relating to the designation as "Excess Shares" for any shares held in excess of the relevant Ownership Limits; such designation and treatment being effective as of the close of business on the business day prior to the date of the purported transfer or other event leading to such Excess Shares.[43]
- Deletion of current text requiring notification to the ISE Trust upon the occurrence of certain events and the transfer of Voting Shares to the ISE Trust.[44]
- Addition of new text describing the treatment of "Excess Shares" upon any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits. Specifically, the Exchange proposes within new Article FOURTH, Section III(c)(i) of the ISE Holdings COI that any such purported event shall be void ab initio as to such Excess Shares, and the intended transferee shall acquire no rights in such Excess Shares. Such Excess Shares shall be deemed to have been transferred to ISE Holdings (or to an entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning such Excess Shares), as Special Trustee of the Charitable Trust for the exclusive benefit of the Charitable Beneficiary or Beneficiaries.[45]
- Addition of new text describing the treatment of dividends or other distributions paid with respect to Excess Shares.[46]
- Addition of new text describing the handling of any distribution of assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of ISE Holdings.[47]
- Addition of new text describing the authority of the Special Trustee with respect to rescinding as void any votes cast by a purported transferee or holder of Excess Shares as well as recasting of votes in accordance with the desires of the Special Trustee acting for the benefit of ISE Holdings.[48]
- Addition of new text describing the sale by the Special Trustee, to a Person or Persons designated by the Special Trustee whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, of Excess Shares transferred to the Charitable Trust, within 20 days of receiving notice from ISE Holdings that Excess Shares have been so transferred.[49] Existing text would be deleted that requires the Trustees of the ISE Trust to use their commercially reasonable efforts to sell the Excess Shares upon receipt of written instructions from the ISE Trust Beneficiary. New text also would be added describing the handling of any proceeds of such a sale.
- Addition of new text describing that Excess Shares shall be deemed to have been offered for sale to ISE Holdings on

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[41] ISE Holdings may also determine to appoint as "Special Trustee" any entity that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings. Currently, the ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains ownership or voting interest in ISE Holdings in excess of the Ownership Limits or Voting Limits or in the event of a Material Compliance Event. *See* SR–ISE–2007–101, *supra* note 6, for a discussion of the ISE Trust, including the operation thereof.

[42] The Exchange is not proposing any changes to the actual Ownership Limits or Voting Limits specified in the current ISE Holdings COI. *See* Article FOURTH, Sections III(a) and III(b) of the ISE Holdings COI. The Exchange proposes to delete certain defined terms from the ISE Holdings COI, such as "ISE Trust," "Trust Beneficiary" and "Trustee," and replace them with new defined terms within the ISE Holdings COI, such as "Charitable Trust," "Charitable Beneficiary" and "Special Trustee." The Exchange also proposes to renumber certain sections of the ISE Holdings COI to account for proposed new and deleted sections therein.

[43] *See* resulting Article FOURTH, Section III(c).

[44] *Id.*

[45] *See* proposed Article FOURTH, Section III(c)(ii). The "Charitable Beneficiary" would be one or more organizations described in Sections 170(b)(1)(A) or 170(c) of the Internal Revenue Code of 1986, as amended from time to time. The "Charitable Trust" would be the trust established for the benefit of the Charitable Beneficiary for which ISE Holdings is the trustee. The "Special Trustee" would be ISE Holdings, in its capacity as trustee for the Charitable Trust, any entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings.

[46] *See* proposed Article FOURTH, Section III(c)(iii).

[47] *See* proposed Article FOURTH, Section III(c)(iv).

[48] *See* proposed Article FOURTH, Section III(c)(v).

[49] *See* proposed Article FOURTH, Section III(c)(vi).

the date of the transaction or event resulting in such Excess Shares.[50]

- Deletion of current Article FOURTH, Section III(c)(v), which currently relates to the ISE Trust Beneficiary's right to reacquire Excess Shares from the ISE Trust under certain circumstances.

The Exchange is not proposing to reinstate all of the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings, as certain of such text would continue to not be applicable, even after the Transaction, given the Exchange's resulting ownership. For example, prior to Deutsche Börse's ownership of ISE Holdings, the ISE Holdings COI contained certain provisions that dealt with the publicly-traded nature of ISE Holdings' stock. This text was removed from the ISE Holdings COI upon Deutsche Börse's ownership of ISE Holdings, as ISE Holdings' stock ceased to be publicly-traded.[51] Therefore, the Exchange is not proposing to reinstate the following provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings relating to:

- Regulation 14A under the Act (pertaining to solicitations of proxies).
- the treatment of transactions of ISE Holdings stock on or through the facilities of any national securities exchange or national securities association.
- inspection of the ISE Holdings accounts and records by ISE Holdings stockholders.
- stockholder voting to amend, repeal or adopt provisions of the ISE Holdings COI or the ISE Holdings Bylaws.
- stockholder action called at annual or special meetings of stockholders.
- nominations for directors and the election thereof.

The Exchange also is not proposing to reinstate the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings that related to changes in terminology used throughout the ISE Holdings COI.[52] Additionally, provisions of the ISE Holdings COI that authorize shares of capital stock of ISE Holdings have been amended since Deutsche Börse acquired ownership of ISE Holdings.[53] The Exchange does not propose to amend the text of the ISE Holdings COI relating to share authorization. The Exchange also does not propose to reinstate the location or specific wording of text of the ISE Holdings COI that was adjusted or relocated upon Deutsche Börse's ownership of ISE Holdings, but that otherwise has the same practical effect and meaning as it did prior to Deutsche Börse's ownership of ISE Holdings.

7. U.S. Exchange Holdings COI

The Exchange proposes to remove the reference to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI. As proposed herein, the Trust Agreement will cease to be considered rules of the Exchange as of the Closing of the Transaction and would be repealed in connection with the Transaction. The Exchange also proposes to retitle the document as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings and update the effective date thereof.[54]

8. ISE Holdings Bylaws

The ISE Holdings COI Voting Limits restrict any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings. The ISE Holdings COI Ownership Limits restrict any person, either alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[55]

The ISE Holdings COI and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if the board makes the following three findings: (1) The waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an exchange under the Act and the rules thereunder; (2) the waiver is otherwise in the best interests of ISE Holdings, its stockholders, and the Exchange; and (3) the waiver will not impair the ability of the Commission to enforce the Act. However, the board of directors may not waive these voting and ownership restrictions as they apply to Exchange members. In addition, the board of directors may not waive these voting and ownership restrictions if such waiver would result in a person subject to a "statutory disqualification" owning or voting shares above the stated thresholds. Any waiver of these voting and ownership restrictions must be by way of an amendment to the Bylaws approved by the board of directors, which amendment must be approved by the Commission.[56]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.[57] In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the Proposed Rule Change to the Commission. In so waiving the applicable voting and ownership restrictions, the board of directors of ISE Holdings has determined, with respect to Nasdaq, that: (i) Such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Act and the rules promulgated thereunder; [58] (ii) such waiver is otherwise in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange, or facility thereof; [59] (iii) such waiver will not impair the ability of the Commission to enforce the Act; [60] (iv) neither Nasdaq nor any of its Related Persons (as that term is defined in the ISE Holdings COI) are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); and (v) neither Nasdaq nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Act) of such Controlled National Securities Exchange.

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[50] *See* proposed Article FOURTH, Section III(c)(vii).

[51] *See* Exhibit 5A to SR–ISE–2007–101, *supra* note 6.

[52] For example, the ISE Holdings COI currently refers to Delaware General Corporation Law as "DGCL." The Exchange would not reinstate the prior "GCL" term that was used in the ISE Holdings COI.

[53] *See, e.g.,* Securities Exchange Act Release No 73860 (December 17, 2014), 79 FR 77066 (December 23, 2014) (SR–ISE–2014–44).

[54] The proposed, amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5F. Article SIXTEENTH of the U.S. Exchange Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the U.S. Exchange Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The Exchange also proposes to amend the U.S. Exchange Holdings COI to consistently refer to such document as the "Restated Certificate," which is a defined term therein.

[55] *See* ISE Holdings COI, Article FOURTH, Section III.

[56] *See* ISE Holdings COI, Article FOURTH, Sections III(a)(i) and III(b)(i). Such amendment to Holdings Bylaws must be filed with and approved by the Commission under Section 19(b) of the Act and become effective thereunder. In this regard, Section 10.1 of the Bylaws provides that the Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors of ISE Holdings or meeting of the stockholders. With respect to each national securities exchange controlled, directly or indirectly, by ISE Holdings (the "Controlled National Securities Exchanges"), or facility thereof, before any amendment to or repeal of any provision of the Bylaws of ISE Holdings shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[57] The proposed, amended ISE Holdings Bylaws are attached hereto as Exhibit 5G. The proposed amendment to the ISE Holdings Bylaws would also clarify that Eurex Global Derivatives AG or "EGD," which is referenced in Section 11.2 of the ISE Holdings Bylaws, ceased to be an Upstream Owner of the Exchange as a result of a prior transaction that did not require an amendment to the ISE Holdings Bylaws. *See* Securities Exchange Act Release No. 73530 (November 5, 2014), 79 FR 77066 (December 17, 2014) (SR–ISE–2014–44).

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. In addition, the Transaction will not impair the ability of the Exchange's, or any facility thereof, to carry out their respective functions and responsibilities under the Act and will not impair the ability of the Commission to enforce the Act. The Exchange therefore seeks approval of the waiver described herein with respect to the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.

Summary

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Transaction will not impair the ability of ISE Holdings, the Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Act with respect to the Exchange. As such, the Commission's plenary regulatory authority over the Exchange will not be affected by the approval of this Proposed Rule Change. The Exchange is requesting approval by the Commission of changes proposed herein in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b)of the Act,[61] in general, and furthers the objectives of Section 6(b)(1) of the Act,[62] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this Proposed Rule Change furthers the objectives of Section 6(b)(5) [63] of the Act because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the Proposed Rule Change will continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors.

Approval of this Proposed Rule Change will enable ISE Holdings to continue its operations and the Exchange to continue its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Exchange expects that the Transaction will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Transaction will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Transaction will contribute to streamlined and efficient operations, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

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[58] For example, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.

[59] For example, the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services.

[60] For example, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Commission will continue to have appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

[61] 15 U.S.C. 78s(b).

[62] 15 U.S.C. 78s(b)(1).

[63] 15 U.S.C. 78f(b)(5).

Furthermore, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

The Exchange believes it is consistent with the Act to allow Nasdaq to become the ultimate parent of the Exchange. Neither Nasdaq nor any of its related persons is subject to any statutory disqualification or is a Member of the Exchange. Moreover, the Nasdaq governing documents include certain provisions designed to maintain the independence of the Exchange's self-regulatory functions. Accordingly, the Exchange believes that Nasdaq's acquisition of ultimate ownership and exercise of voting control of the Exchange will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

Although Nasdaq will not carry out regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. Nasdaq's governing documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[64] and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. For example, the Nasdaq governing documents provide that Nasdaq will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Exchange. Also, each board member, officer, and employee of Nasdaq, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the Exchange. In discharging his or her responsibilities as a board member of Nasdaq, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that Nasdaq's actions would have on the ability of the Exchange to carry out its responsibilities under the Act. In addition, Nasdaq, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange.

Further, Nasdaq (along with its respective board members, officers, and employees) and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the Exchange and not use such information for any non-regulatory purposes.

In addition, Nasdaq's books and records relating to the activities of the Exchange will at all times be made available for, and books and records of U.S. Exchange Holdings will be subject at all times to, inspection and copying by the Commission and the Exchange. Books and records of U.S. Exchange Holdings related to the activities of the Exchange also will continue to be maintained within the U.S. Moreover, for so long as Nasdaq directly or indirectly controls the Exchange, the books, records, officers, directors (or equivalent), and employees of Nasdaq shall be deemed to be the books, records, officers, directors, and employees of the Exchange.

To the extent involved in the activities of the Exchange, Nasdaq, its board members, officers, and employees irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange. Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the U.S., to the extent such directors, officers, or employees are involved in the activities of the Exchange, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange.

The Nasdaq governing documents, the U.S. Exchange Holdings COI, and the U.S. Exchange Holdings Bylaws require that any change thereto must be submitted to the Exchange's Board. If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission. This requirement to submit changes to the Exchange's Board continues for so long as Nasdaq or U.S. Exchange Holdings, as applicable, directly or indirectly, control the Exchange.

As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange upon the Closing of the Transaction, the Exchange believes that its proposal that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (*e.g.*, U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange believes that its proposal that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

Given the Exchange's proposal to repeal the Trust Agreement and dissolve the ISE Trust, the Exchange believes that the proposed changes to the ISE Holdings COI are consistent with the Act. The proposed changes would delete provisions of the ISE Holdings COI that will no longer be relevant and would reinstate certain provisions of the ISE Holdings COI that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[65] the Exchange believes that the Proposed Rule Change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members.

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[64] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[65] 15 U.S.C. 78f(b)(8).

The Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.[66] In this regard, the Exchange notes that the Exchange, and its affiliates ISE Gemini and ISE Mercury, function only as options trading markets—they do not function as equity trading markets or as clearing agencies, as do certain of Nasdaq's existing subsidiaries.

The Exchange believes that there is considerable support for a finding that the Transaction is consistent with the Act with respect to competition. 14 exchanges currently compete for options trading business. Exchanges compete on technology, market model, trading venue, fees and fee structure. Additionally, low switching costs allow customers to easily move to another exchange, which customers do regularly, as reflected in constantly varying market shares among the existing exchange operators. In addition, the Commission has approved several, new registered options exchanges in recent history, which highlights an increase in competition in the market for listed options trading.[67]

The Exchange believes that the Transaction will not change the competitive landscape for listed options trading and the changes proposed herein are consistent with other recent Commission approvals. For example, a similar proposed combination of Deutsche Börse and NYSE Euronext in 2011 received Commission approval and would have resulted in a combined greater than 40% market share of listed options volume among its three, respective options exchanges (based on 2010 data).[68] Similarly, as a result of the Transaction, the options exchanges owned by Nasdaq would account for approximately 41% aggregate market share of listed options volume.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change; or

(B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2016–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2016–11. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2016–11, and should be submitted on or June 6, 2016.

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[66] *See, e.g.,* Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR–CBOE–2011–107 and SR–NSX–2011–14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR–NYSE–2005–77); Securities Exchange Act Release No. 71449 (Jan. 30, 2014), 79 FR 6961 (Feb. 05, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43); Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72).

[67] *See, e.g.,* Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order approving application for exchange registration of ISE Mercury, LLC); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (Order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (Order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (Order approving rules governing the trading of options on the BATS Options Exchange).

[68] *See* Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11405 Filed 5–13–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77790; File No. SR–BatsBYX–2016–06]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.13, Order Execution and Routing, To Delete the IOCM and ICMT Routing Options

May 10, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.13, Order Execution and Routing, to delete the IOCM and ICMT routing options. The Exchange also proposes to amend its fee schedule to delete: (i) References to the IOCM and ICMT routing options under footnote 8; and (ii) fee code PX, which is yielded on orders routed using the RMPT routing option or routed to Bats EDGX Exchange, Inc. ("EDGX") to execute against MidPoint Peg Orders[5] on EDGX using ICMT or IOCM routing options.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.13, Order Execution and Routing, to delete the IOCM and ICMT routing options. The Exchange also proposes to amend its fee schedule to delete: (i) References to the IOCM and ICMT routing options under footnote 8; and (ii) fee code PX, which is yielded on orders routed using the RMPT routing option or routed to EDGX to execute against MidPoint Peg Orders on EDGX using ICMT or IOCM routing options.

Under Rule 11.13(b)(3)(O), an order utilizing the IOCM routing option checks the System[6] for available shares and then is sent, as MidPoint Peg Order with a Time-in-Force of IOC, to EDGX. Under Rule 11.13(b)(3)(P), an order utilizing the ICMT routing option checks the System for available shares, then is sent to destinations on the System routing table and then is sent, as MidPoint Peg Order with a Time-in-Force of IOC, to EDGX. If shares remain unexecuted after routing pursuant to both the IOCM and ICMT routing options, they are posted on the book, unless otherwise instructed by the User.[7]

Footnote 8 of the fee schedule states that orders in securities priced below $1.00 that remove liquidity utilizing certain routing strategies, including IOCM and ICMT are charged a fee of $0.29% of the trade's total dollar value. Fee code PX is yielded on orders routed using the RMPT routing option or routed to EDGX to execute against MidPoint Peg Orders on EDGX using ICMT or IOCM routing options. Orders that yield fee code PX pay a fee of $0.0012 per share in securities priced at or above $1.00 and 0.29% of the trade's dollar value for securities priced below $1.00.

Because few Users elect the IOCM or ICMT routing options, the Exchange has determined that the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support the products. Therefore, the Exchange proposes to delete the IOCM and ICMT routing options under Rule 11.13(b)(3)(O) and (P) as well as a reference to the IOCM and ICMT routing options under Rule 11.13(b)(3)(H). The Exchange also proposes to amend its fee schedule to delete: (i) References to the IOCM and ICMT routing options under footnote 8; and (ii) fee code PX, which is yielded on orders routed using the RMPT routing option or routed to EDGX to execute against MidPoint Peg Orders on EDGX using ICMT or IOCM routing options. Users seeking to route midpoint eligible orders to EDGX may use alternative methods, such as connecting to EDGX directly or through a third party service provider, or electing another routing option offered by the Exchange that enables a User to post an order to certain primary listing markets.[8]

The Exchange intends to implement the proposed rule change on May 5, 2016.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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[69] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* EDGX Rule 11.8(d). The BYX fee schedule uses the term "EDGX MPM" for fee code PX. EDGX MPM is intended to refer to contra side MidPoint Peg Orders on EDGX.

[6] The "System" is the Exchange's electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(aa).

[7] The term "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." *See* Exchange Rule 1.5(cc).

[8] *See e.g.,* Rule 11.13(b)(3)(Q) (describing the RMPT routing option under which a Mid-Point Peg Order checks the System for available shares and any remaining shares are then sent to destinations on the System routing table that support midpoint eligible orders. If any shares remain unexecuted after routing, they are posted on the BYX book as a MidPoint Peg Order, unless otherwise instructed by the User).

[9] *See Bats to Decommission ICMT, IOCM, and TRIM3 Routing Strategies,* issued April 18, 2016, *available at http://cdn.batstrading.com/resources/release_notes/2016/Bats-to-Decommission-ICMT-IOCM-and-TRIM3-Routing-Strategies.pdf.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the IOCM and ICMT routing options will no longer be available to all Users. The Exchange has few Users electing the IOCM and ICMT routing options and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support the products. Routing through the Exchange is voluntary and alternative routing options offered by the Exchange as well as other methods remain available to Users that wish to route midpoint eligible orders to EDGX.[12] In addition, the IOCM and ICMT routing options are not core product offerings by the Exchange, nor is the Exchange required by the Act to offer such products. Therefore, the Exchange believes the proposed rule change would make its rules clearer and less confusing for investors by removing routing options that will no longer be offered by the Exchange; thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather avoid investor confusion by eliminating the IOCM and ICMT routing options that are to be discontinued by the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow the Exchange to modify its rules in a timely manner by: (i) Eliminating a rule that accounts for services with few subscribers that the Exchange intends to discontinue; and (ii) accurately describing the alternative routing options available to Users, thereby avoiding potential investor confusion during the operative delay period. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2016–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBYX–2016–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBYX–2016–06, and should be submitted on or before June 6, 2016.

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[12] *See supra* note 8 and accompanying text.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11401 Filed 5–13–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77801; File No. SR–Phlx–2016–55]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Maximum Number of Times an Order on PSX May Be Updated Before the System Cancels the Order

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on May 2, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the maximum number of times an Order on PSX may be updated before the System cancels the Order.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Background

The Exchange will cancel an Order if it is updated a certain number of times during any given day. Pursuant to Rule 3301A(a), an Order will be cancelled if it is repriced and/or reentered 10,000 times for any reason.[3]

Pursuant to Rule 3301A(b)(5)(A), a Market Maker Peg Order will be canceled if it is repriced 1,000 times. Pursuant to Rule 3301B(d), an Order with Primary Pegging will be cancelled if it is updated 1,000 times, and an Order with Market Pegging will be cancelled if it is updated 10,000 times.

The Exchange applies these limits to conserve System resources by limiting the persistence of Orders that update repeatedly without execution. These limits are applied daily to each order entered into the System. Orders that have a Time-in-Force[4] that allows them to persist longer than a single trading day will have their count reset each day. For example, if an Order with a Time-in-Force of Good-till-Canceled[5] is repriced 9,999 times during any given day, the Order will not be canceled due to the number of updates. Starting the next day, the Order would be again allowed to reprice up to 9,999 times before it would be canceled by the System.

Proposed Changes

First, the Exchange is proposing to eliminate rule text under Rules 3301A(a), 3301A(b)(5)(A), and 3301B(d) concerning cancellation based on Order updates and consolidate the concept under a new Rule 3306(a)(4).

Second, the Exchange is proposing to no longer state the specific number of times a particular Order Type may be updated before it is canceled in the new rule and is, instead, noting that the number of permissible changes may vary by Order Type or Order Attribute and may change from time to time. Further, the proposed rule will note that the Exchange will post on its Web site what is considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

The Exchange is changing the process by which it counts updates, which will allow it to identify a wider range of updates to an Order. Using the new process, the Exchange will be able to track the following Order updates: (1) System-generated child Orders; (2) display size refreshes from reserve; (3) replaces of System-generated child Orders (which include Orders with a Pegging Attribute); and (4) cancellation requests of System-generated child Orders. The Exchange notes that all updates identified by the current process will be counted under the new process. The Exchange believes these changes will provide it with greater flexibility in addressing changes in volume, market participant behavior, and the Exchange's capacity to handle the message volume caused by Orders that update a significant number of times throughout the trading day.

The Exchange will provide at least one day's advanced notice to the public of any changes to the number of updates permitted before an Order is canceled. Initially, the Exchange will keep the number of updates consistent with what is currently noted in the rules; however, the Exchange may shortly thereafter change the number of updates as needed to address market conditions.

Phlx is also making minor technical corrections to Rule 3301B(d) to change the word "they" to the word "the" in the first full paragraph below the bulleted list under the rule and to delete an erroneous quote from the end of the same paragraph.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Orders entered through OUCH and FLITE ports generally are not repriced or reentered. As explained in rule 3301A(b)(1)(B), orders entered through OUCH and FLITE may be updated for display once. Further, OUCH and FLITE Orders may only be decremented in size, which is not considered repricing or reentry of the Order. *See http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs* for a description of the various order entry port specifications.

[4] The "Time-in-Force" assigned to an Order means the period of time that the System will hold the Order for potential execution. *See* Rule 3301B(a).

[5] An Order that is designated to deactivate one year after entry may be referred to as a "Good-till-Cancelled." *See* Rule 3301B(a)(3).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

Excessive updating of Orders places a burden on the Exchange's System, which, if left unchecked, could potentially affect overall market quality. The Exchange will continue canceling Orders that reach a certain number of updates but, instead of the static number of updates stated in the rules, the Exchange is proposing to provide the number of updates by Order Type or Order Attribute on its public Web site. Web site posting will allow the Exchange to react more quickly to changes in the marketplace by changing the applicable number of updates that will trigger cancellation of an Order. The Exchange will provide advanced notice to market participants of any changes to the number of updates applied. Thus, the proposed rule change will further promote the protection [sic] investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[8] The Exchange is proposing to make the change because it will allow it to better manage market quality for all market participants, who would be negatively impacted by issues caused by Orders that tax System resources due to the excessive number of updates.

These adjustments will not impact competition among market participants because the cancellation parameters will apply equally to all market participants. As is the case now, market participants that have an Order canceled due to the number of updates may enter a new replacement Order. Thus, the Exchange does not think that the proposed change will place a burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–55 and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11412 Filed 5–13–16; 8:45 am]

BILLING CODE 8011–01–P

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[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77799; File No. SR–BX–2016–024]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Maximum Number of Times an Order on BX May Be Updated Before the System Cancels the Order

May 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the maximum number of times an Order on the Exchange may be updated before the System cancels the Order.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange will cancel an Order if it is updated a certain number of times during any given day. Pursuant to Rule 4702(a), an Order will be cancelled if it is repriced and/or reentered 10,000 times for any reason.[3]

Pursuant to Rule 4702(b)(7)(A), a Market Maker Peg Order will be canceled if it is repriced 1,000 times. Pursuant to Rule 4703(d), an Order with Primary Pegging will be cancelled if it is updated 1,000 times, and an Order with Market Pegging will be cancelled if it is updated 10,000 times.

The Exchange applies these limits to conserve System resources by limiting the persistence of Orders that update repeatedly without execution. These limits are applied daily to each order entered into the System. Orders that have a Time-in-Force[4] that allows them to persist longer than a single trading day will have their count reset each day. For example, if an Order with a Time-in-Force of Good-till-Canceled[5] is repriced 9,999 times during any given day, the Order will not be canceled due to the number of updates. Starting the next day, the Order would be again allowed to reprice up to 9,999 times before it would be canceled by the System.

Proposed Changes

First, the Exchange is proposing to eliminate rule text under Rules 4702(a), 4702(b)(7)(A), and 4703(d) concerning cancellation based on Order updates and consolidate the concept under a new Rule 4756(a)(4).

Second, the Exchange is proposing to no longer state the specific number of times a particular Order Type may be updated before it is canceled in the new rule and is, instead, noting that the number of permissible changes may vary by Order Type or Order Attribute and may change from time to time. Further, the proposed rule will note that the Exchange will post on its Web site what is considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

The Exchange is changing the process by which it counts updates, which will allow it to identify a wider range of updates to an Order. Using the new process, the Exchange will be able to track the following Order updates: (1) System-generated child Orders; (2) display size refreshes from reserve; (3) replaces of System-generated child Orders (which include Orders with a Pegging Attribute); and (4) cancellation requests of System-generated child Orders. The Exchange notes that all updates identified by the current process will be counted under the new process. The Exchange believes these changes will provide it with greater flexibility in addressing changes in volume, market participant behavior, and the Exchange's capacity to handle the message volume caused by Orders that update a significant number of times throughout the trading day.

The Exchange will provide at least one day's advanced notice to the public of any changes to the number of updates permitted before an Order is canceled. Initially, the Exchange will keep the number of updates consistent with what is currently noted in the rules; however, the Exchange may shortly thereafter change the number of updates as needed to address market conditions.

BX is also making minor technical corrections to Rule 4702(b)(7) to make "(A)" denoting subparagraph (A) under the rule not bold, and to insert missing spaces between words in the sixth paragraph of subparagraph (A) under the rule. BX is also changing the word "they" to the word "the" in the first full paragraph below the bulleted list under Rule 4703(d).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[6] in general, and with section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Excessive updating of Orders places a burden on the Exchange's System, which, if left unchecked, could potentially affect overall market quality. The Exchange will continue canceling Orders that reach a certain number of updates but, instead of the static number of updates stated in the rules, the Exchange is proposing to provide the number of updates by Order Type or Order Attribute on its public Web site. Web site posting will allow the Exchange to react more quickly to changes in the marketplace by changing the applicable number of updates that will trigger cancellation of an Order. The Exchange will provide advanced notice to market participants of any changes to the number of updates applied. Thus, the proposed rule change will further promote the protection [sic] investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[8] The Exchange is proposing to make the change because it will allow it to better manage market quality for all market participants, who would be negatively impacted by issues caused by Orders that tax System resources due to the excessive number of updates.

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[3] Orders entered through OUCH and FLITE ports generally are not repriced or reentered. As explained in rule 4702(b)(1)(B), orders entered through OUCH and FLITE may be updated for display once. Further, OUCH and FLITE Orders may only be decremented in size, which is not considered repricing or reentry of the Order. *See http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs* for a description of the various order entry port specifications.

[4] The "Time-in-Force" assigned to an Order means the period of time that the System will hold the Order for potential execution. *See* Rule 4703(a).

[5] An Order that is designated to deactivate one year after entry may be referred to as a "Good-till-Cancelled." *See* Rule 4703(a)(3).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

These adjustments will not impact competition among market participants because the cancellation parameters will apply equally to all market participants. As is the case now, market participants that have an Order canceled due to the number of updates may enter a new replacement Order. Thus, the Exchange does not think that the proposed change will place a burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–024 and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11410 Filed 5–13–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Wednesday, May 18, 2016, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov*.

On May 4, 2016, the Commission published notice of the Committee meeting (Release No. 33–10074), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact the Brent J. Fields in the Office of the Secretary at (202) 551–5400.

Dated: May 11, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–11581 Filed 5–12–16; 11:15 am]

BILLING CODE 8011–01–P

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[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77793; File No. SR-BatsBYX–2016–07]

Self-Regulatory Organizations; Bats BYX Exchange, Inc. f.k.a BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 11.27(a) To Implement the Quoting and Trading Provisions of the Regulation NMS Plan To Implement a Tick Size Pilot Program

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2016, Bats BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Exchange Rule 11.27(a) to implement the quoting and trading provisions of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is substantially similar to a proposed rule change approved by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(a) which also implemented the quoting and trading provisions of the Plan.[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, BZX, Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. f/k/a EDGA Exchange, Inc., Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program ("Pilot").[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan[9] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable quoting and trading increments for Pilot Securities.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot securities in the control group will be quoted and traded at the currently permissible increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's[15] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[16] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[17] will apply to the Trade-at requirement.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 77291 (March 3, 2016), 81 FR 12543 (March 9, 2016) (order approving SR–BATS–2015–108).

[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan. The Exchange also proposes supplementary material as part of this proposed rule change to, among other things, provide that the terms used in proposed Rule 11.27 shall have the same meaning as provided in the Plan, unless otherwise specified.

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) ("Approval Order").

[11] The Exchange proposes to add Information and Policy .03 to Rule 11.27 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[16] *See* Section VI(D) of the Plan.

[17] 17 CFR 242.611.

Compliance With the Quoting and Trading Increments of the Plan

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange is proposing new paragraph (a) to Rule 11.27 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program) to require Members[18] to comply with the quoting and trading provisions of the Plan.

Proposed Rule 11.27(a) (Compliance with Quoting and Trading Restrictions) sets forth the requirements for the Exchange and Members in meeting their obligations under the Plan. Rule 11.27(a)(1) will require Members to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements of the Plan. Rule 11.27(a)(2) provides that the Exchange Systems[19] will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

Proposed Rule 11.27(a)(3) clarifies the treatment of Pilot Securities that drop below $1.00 during the Pilot Period. In particular, Rule 11.27(a)(3) provides that, if the price of a Pilot Security drops below $1.00 during regular trading hours on any trading day, such Pilot Security will continue to be a Pilot Security subject to the Plan. However, if the Closing Price of a Pilot Security on any given trading day is below $1.00, such Pilot Security will be moved out of its Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted for the remainder of the Pilot Period.[20] Rule 11.27(a)(3) also provides that, notwithstanding anything contained within these rules to the contrary, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the data collection requirements of the Plan at all times during the Pilot Period and for the six-month period following the end of the Pilot Period.

In approving the Plan, the Commission noted that the Participants had proposed additional selection criteria to minimize the likelihood that securities that trade with a share price of $1.00 or less would be included in the Pilot, and stated that, once established, the universe of Pilot Securities should stay as consistent as possible so that the analysis and data can be accurate throughout the Pilot Period.[21] The Exchange notes that a Pilot Security that drops below $1.00 during regular trading hours will remain in its applicable Test Group; a Pilot Security will only be moved to the Control Group if its Closing Price on any given trading day is below $1.00. The Exchange believes that this provision is appropriate because it will help ensure that Pilot Securities in Test Groups One, Two and Three continue to reflect the Pilot's selection criteria, helping ensure the accuracy of the resulting data. The Exchange also believes that this provision is appropriate because it responds to comments that the Plan address the treatment of securities that trade below $1.00 during the Pilot Period.[22]

Proposed Rule 11.27(a)(4) sets forth the applicable limitations for securities in Test Group One. Consistent with the language of the Plan, Rule 11.27(a)(4) provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than $0.05. However, orders priced to execute at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO")[23] and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Participant, SEC and Exchange rules.

Proposed Rule 11.27(a)(5) sets forth the applicable quoting and trading requirements for securities in Test Group Two. This provision states that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

Proposed Rule 11.27(a)(5) also sets forth the applicable trading restrictions for Test Group Two securities. Absent any of the exceptions listed in the Rule, no Member may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.

Consistent with the language of the Plan, the Rule provides that Pilot Securities in Test Group Two may trade in increments of less than $0.05 under the following circumstances: (1) trading may occur at the midpoint between the NBBO or the PBBO; (2) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO; and (3) Negotiated Trades may trade in increments of less than $0.05.

The Exchange also proposes to add an exception to Rule 11.27(a)(5) to permit Members to fill a customer order in a Pilot Security in Test Group Two at a non-nickel increment to comply with

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[18] The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." *See* Exchange Rule 1.5(n).

[19] The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

[20] The NYSE, on behalf of the Plan Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. *See* letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 ("October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 ("February Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated March 3, 2016 ("Exemption Letter"). The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request.

[21] *See* Approval Order, *supra* note10, 80 FR at 27535.

[22] *Id.*

[23] Regulation NMS defines a protected bid or protected offer as a quotation in an NMS stock that (1) is displayed by an automated trading center; (2) is disseminated pursuant to an effective national market system plan; and (3) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. *See* 17 CFR 242.600(57). In the Approval Order, the Commission noted that the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all Trading Centers, whereas the NBBO standard is limited to the single best order in the market. *See* Approval Order, *supra* note 10, 80 FR at 27539.

Exchange Rule 12.6 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the Member at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Exchange Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[24]

Thus, the Exchange is proposing to add a customer order protection exception to Rule 11.27(a)(5) that would permit Members to trade Pilot Securities in Test Group Two in increments less than $0.05, and where the Member is executing a customer order to comply with Exchange Rule 12.6 following the execution of a proprietary trade by the Member at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan. The Exchange believes that this approach best facilitates the ability of Members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

Proposed Rule 11.27(a)(6) sets forth the applicable quoting and trading restrictions for Pilot Securities in Test Group Three. The rule provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. The rule also states that, absent any of the applicable exceptions, no Member that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.[25]

Proposed Rule 11.27(a)(6)(C) sets forth the exceptions pursuant to which Pilot Securities in Test Group Three may trade in increments of less than $0.05. First, trading may occur at the midpoint between the NBBO or PBBO. Second, Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO. Third, Negotiated Trades may trade in increments of less than $0.05.

Similar to that proposed under Rule 11.27(a)(5) described above, the Exchange also proposes to add an exception to Rule 11.27(a)(6) to permit Members to fill a customer order in a Pilot Security in Test Group Three at a non-nickel increment to comply with Exchange Rule 12.6 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the Member at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Exchange Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[26] Thus, the Exchange is proposing to add a customer order protection exception to Rule 11.27(a)(6) that would permit Members to trade Pilot Securities in Test Group Three in increments less than $0.05, and where the Member is executing a customer order to comply with Exchange Rule 12.6 following the execution of a proprietary trade by the Member at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan.

Proposed Rule 11.27(a)(6)(D) sets forth the "Trade-at Prohibition," which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours, absent any of the exceptions set forth in Rule 11.27(a)(6)(D). Consistent with the Plan, the rule reiterates that a Member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A Member that operates a Trading Center that was not displaying a quotation that is the same price as a Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies.

Consistent with the Plan, proposed Rule 11.27(a)(6)(D) also sets forth the exceptions to the Trade-at prohibition, pursuant to which a Member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer. The first exception to the Trade-at Prohibition is the "display exception," which allows a trade to occur at the price of the Protected Quotation, up to the Trading Center's full displayed size, if the order "is executed by a trading center that is displaying a quotation."[27]

In Rule 11.27(a)(6)(D), the Exchange proposes that a Member that utilizes the independent aggregation unit concept may satisfy the display exception only if the same independent aggregation unit that displays interest via either a processor or an SRO Quotation Feed also executes an order in reliance upon this exception. The rule provides that "independent aggregation unit" has the same meaning as provided under Rule 200(f) of SEC Regulation SHO.[28] This provision also recognizes that not all members may utilize the independent aggregation unit concept as part of their regulatory structure, and still permits such members to utilize the display exception if all the other requirements of that exception are met.

As initially proposed by the Participants, the Plan contained an additional condition to the display exception, which would have required that, where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on that national securities exchange; and where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility of such approved facility ("venue limitation").[29] Some commenters stated that this provision was anti-competitive, as it would have forced off-exchange Trading Centers to route orders to the venue on which the order was displayed.[30]

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[24] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[25] A brokered cross trade is a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security. *See* Section I(G) of the Plan.

[26] *See supra* note 24. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[27] *See* Section VI(D)(1) of the Plan.

[28] 17 CFR 242.200. Treatment as an independent aggregation unit is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(ies) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, one independent aggregation unit within a Trading Center cannot execute trades pursuant to the display exception in reliance on quotations displayed by a different independent aggregation unit. As an example, an agency desk of a Trading Center cannot rely on the quotation of a proprietary desk in a separate independent aggregation unit at that same Trading Center.

In approving the Plan, the Commission modified the Trade-At Prohibition to remove the venue limitation.[31] The Commission noted that the venue limitation was not prescribed in its Order mandating the filing of the Plan.[32] The Commission also noted that the venue limitation would have unnecessarily restricted the ability of off-exchange market participants to execute orders in Test Group Three Securities, and that removing the venue limitation should mitigate concerns about the cost and complexity of the Pilot by reducing the need for off-exchange Trading Centers to route to the exchange.[33] The Commission also stated that the venue limitation did not create any additional incentives to display liquidity in furtherance of the purposes of the Trade-At Prohibition, because the requirement that a Trading Center could only trade at a protected quotation up to its displayed size should be sufficient to incentivize displayed liquidity.[34]

Consistent with Plan and the SEC's determination to remove the venue limitation, the Exchange is making clear that the display exception applies to trades done by a Trading Center otherwise than on an exchange where the Trading Center has previously displayed a quotation in either an agency or a principal capacity. As part of the display exception, the Exchange also proposes that a Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal, while a Trading Center displaying a quotation as principal (excluding riskless principal) may execute either as principal or agent or riskless principal. The Exchange believes this is consistent with the Plan and the objective of the Trade-at Prohibition, which is to promote the display of liquidity and generally to prevent any Trading Center that is not quoting from price-matching Protected Quotations. Providing that a Trading Center may not execute on a proprietary basis in reliance on a quotation representing customer interest (whether agency or riskless principal) ensures that the Trading Center cannot avoid compliance with the Trade-at Prohibition by trading on a proprietary basis in reliance on a quotation that does not represent such Trading Center's own interest. Where a Trading Center is displaying a quotation at the same price as a Protected Quotation in a proprietary capacity, transactions in any capacity at the price and up to the size of such Trading Center's displayed quotation would be permissible. Transactions executed pursuant to the display exception may occur on the venue on which such quotation is displayed or over the counter.

The proposal also excepts Block Size orders[35] and permits Trading Centers to trade at the price of a Protected Quotation, provided that the order is of Block Size at the time of origin and is not an aggregation of non-block orders, broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers.[36] The Plan only provides that Block Size orders shall be exempted from the Trade-At Prohibition. In requiring that the order be of Block Size at the time of origin and not an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers, the Exchange believes that it is providing clarity as to the circumstances under which a Block Size order will be excepted from the Trade-At Prohibition.

Consistent with the Plan, the proposal also excepts an order that is a Retail Investor Order that is executed with at least $0.005 price improvement.

The exceptions set forth in proposed Rule 11.27(a)(6)(D)(ii) d. through n. are based on the exceptions found in Rule 611 of Regulation NMS.[37] The subparagraph d. exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment. The subparagraph e. exception applies to an order that is executed as part of a transaction that was not a "regular way" contract. The subparagraph f. exception applies to an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center. The subparagraph g. exception applies to an order that is executed when a Protected Bid was priced higher than a Protected Offer in a Pilot Security.

The subparagraph h. exception applies when the order is identified as a Trade-at Intermarket Sweep Order. The subparagraph i. exception applies when the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of a Protected Quotation with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. Depending on whether Rule 611 or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (Rule 611), or it could mean that the sender of the ISO has swept protected quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the protected quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 and Trade-at, the Exchange proposes Rule 11.27(a)(6)(D)(ii)(h) so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, *e.g.,* the recipient of that ISO could permissibly trade at the price of the protected quotation.

The Exchange proposes to further clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 11.27(a)(7), a definition of "Trade-at Intermarket Sweep Order." As set forth in the Plan and as noted above, the definition of a Trade-at ISO does not distinguish ISOs that are compliant with Rule 611 from ISOs that are compliant with Trade-at. The Exchange therefore proposes to define a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as a Trade-at

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[29] *See* Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423, 66437 (November 7, 2014).

[30] *See* Approval Order, *supra* note 10, 80 FR at 27540.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[36] Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the proposed Trade-at exemption, unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan.

[37] *See* 17 CFR 242.611.

Intermarket Sweep Order; (2) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. The Exchange believes that this proposed change will further clarify to recipients of ISOs in Group Three securities whether the ISO satisfies the requirements of Rule 611 or Trade-at.

The exception under subparagraph j. of proposed Rule 11.27(a)(6)(D)(ii) applies when the order is executed as part of a Negotiated Trade. The subparagraph k. exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction.

The exception proposed in subparagraph l. applies to a "stopped order." The stopped order exemption in Rule 611 of SEC Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution."[38] The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution."[39]

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of SEC Regulation NMS and as it is currently proposed for Trade-at, assume the NBB is $10.00 and another protected quote is at $9.95. Under Rule 611 of SEC Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the NBB. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Regulation NMS Rule 611 exception than under the proposed Trade-at exception, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception to ensure that the application of this exception will produce a consistent result under both Regulation NMS and the Plan. The Exchange therefore proposes to amend the stopped order exception to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the NBB, and for a stopped sell order, is equal to or greater than the NBO, as long as such order is priced at an acceptable increment.

Proposed subparagraph l. to Rule 11.27(a)(6)(D)(ii) would define a "stopped order" as an order that is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price, where (1) the stopped order was for the account of a customer; (2) the customer agreed to the specified price on an order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution as long as such order is priced at an acceptable increment.[40]

The subparagraph m. exception applies where the order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

The subparagraph n. exception applies to bona fide errors transactions. Following the adoption of Rule 611 and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 for certain error correction transactions.[41] The Exchange has determined that it is appropriate to incorporate the error correction exception to the Trade-at prohibition, as this exception is equally applicable in the Trade-at context. Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of SEC Regulation NMS.[42]

As with the corresponding exception under Rule 611 of SEC Regulation NMS, the Exchange proposes to define a "bona fide error" as: (i) the inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order. The bona fide error must be evidenced by objective facts and circumstances, the Trading Center must maintain documentation of such facts and circumstances, and the Trading Center must record the transaction in its error account. To avail itself of the exemption, the Trading Center must establish, maintain, and enforce written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center must regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures.[43]

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[38] *See* 17 CFR 242.611(b)(9).

[39] *See* Plan, Section VI(D)(12).

[40] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[41] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[42] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

Consistent with the Plan, the final exception to the Trade-At Prohibition and its accompanying supplementary material applies to an order that is for a fractional share of a Pilot Security. The supplementary material provides that such fractional share orders may not be the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or that otherwise were effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan. In approving the Plan, the Commission noted that this exception was appropriate, as there could be potential difficulty in the routing and executing of fractional shares.[44]

The proposed rule change will become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets, and clarifies the provisions of the Plan, and is designed to assist the Exchange and Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to Members, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the quoting and trading requirements of the Plan will apply equally to all Members that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[45] and paragraph (f)(6) of Rule 19b–4 thereunder,[46] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBYX–2016–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–07, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11404 Filed 5–13–16; 8:45 am]

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[43] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[44] *See* Approval Order, *supra* note 10, 80 FR at 27541.

[45] 15 U.S.C. 78s(b)(3)(A).

[46] 17 CFR 240.19b–4.

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77789; File No. SR–BatsBZX–2016–12]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

May 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange maintains a Step-Up Tier that provides Members with an additional way to qualify for enhanced rebates where they increase their liquidity each month over a predetermined baseline. The Exchange currently offers a Step-Up Tier under footnote 2 of its Fee Schedule. Under the Step-Up Tier, a Member receives a rebate of $0.0030 per share where: (1) Their Step-Up Add TCV[6] from August 2015 is equal to or greater than 0.08%; and (2) their ADAV[7] as a percentage of TCV[8] is equal to or greater than 0.35%. The Step-Up Tier is applicable to fee codes B, V and Y.

The Exchange proposes to amend footnote 2 to change the Step-Up Tier to provide a Member a rebate of $0.0030 per share: (1) Where their Step-Up Add TCV from April 2016 is equal to or greater than 0.15%; and (2) their ADAV as a percentage of TCV is equal to or greater than 0.20%. Thus, while the Exchange is not proposing to modify the rebate provided, the Exchange is proposing to reset the starting date for the baseline measurement from August 2015 to April 2016. The Exchange is also proposing to increase the Step-Up Add TCV and to reduce the ADAV required to qualify for the tier.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective May 2, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act,[9] in general, and furthers the objectives of section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Volume-based rebates such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will continue to provide Members with an incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the modification to the Step-Up Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange further believes that the proposed Step-Up Tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier encourages Members to add increased liquidity to the BATS Book[11] each month. The increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. More specifically, the Exchange believes that increasing the Step-Up Add TCV from equal to or greater than 0.08% to equal to or greater than 0.15% will incentivize Members to provide increased volume and therefore increased liquidity. Additionally, the Exchange believes that by reducing the requirement for a Member's ADAV as a percentage of TCV from equal to or greater than 0.35% to equal to or greater than 0.20% the Exchange increases the number of participants potentially eligible to qualify for the rebate and thereby incentivizing a greater number of participants to provide the required liquidity to obtain the rebate. The increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] As defined in the Exchange's Fee Schedule.

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* Exchange Rule 1.5(e).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange does not believe that the modified tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. The Exchange does not believe the amended tier would burden intramarket competition as it would apply to all Members uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and paragraph (f)(2) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–12, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11400 Filed 5–13–16; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77797; File No. SR–BatsBZX–2016–13]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.13, Order Execution and Routing, To Delete References to the TRIM3 Routing Option

May 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2016, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.13, Order Execution and Routing, to delete references to the TRIM3 routing option. The Exchange also proposes to amend its fee schedule to delete references to the TRIM3 routing option under fee codes BY and TV.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.13, Order Execution and Routing, to delete references to the TRIM3 routing option. The Exchange also proposes to amend its fee schedule to delete references to the TRIM3 routing option under fee codes BY and TV.

Exchange Rule 11.13(b)(3)(G) includes the TRIM3 routing option as one of the routing options under which an order checks the System[5] for available shares if so instructed by the entering User[6] and then is sent to destinations on the applicable System routing table. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.[7] Orders routed pursuant to the TRIM3 routing option are only sent to NASDAQ BX, BYX Exchange, Inc. ("BYX"), and certain alternative trading systems available through the Exchange's DRT routing option ("DRT Venues").[8]

Fee code BY is yielded on orders routed to BYX using Destination Specific, TRIM, TRIM2, TRIM3 or SLIM routing strategy. Orders that yield fee code BY receive a rebate of $0.0015 per share. Fee Code TV is yielded on orders routed to NASDAQ BX LLC using TRIM, TRIM2 or TRIM3 routing strategy. Orders that yield fee code TV receive a rebate of $0.0010 per share.

Because few Users elect the TRIM3 routing option, the Exchange has determined that the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support the product. Therefore, the Exchange proposes to delete reference to the TRIM3 routing option under Rule 11.13(b)(3)(G). The Exchange also proposes to amend its fee schedule to delete references to the TRIM3 routing option under fee codes BY and TV. Users seeking to route to BYX, NASDAQ BX, or DRT venues may use alternative methods, such as connecting to those exchanges directly or through a third party service provider, or electing another routing option offered by the Exchange that enables a User to post an order to certain primary listing markets.[9]

In connection with the deletion of the TRIM3 routing option, the Exchange also proposes to amend Rule 11.13(b)(3)(G) to update a numerical reference to the SLIM routing option. Exchange Rule 11.13(b)(3)(G) currently states that in connection with SLIM routing option, currently listed as subsection (vii) of the Rule, a User may designate that an order first routes to BYX, checks the System for available shares, and then routes to other destinations on the System routing table. Upon deletion of the TRIM3 routing option, the SLIM routing option will be renumbered as section (vi) and the Exchange proposes to update Rule 11.13(b)(3)(G) accordingly.

The Exchange intends to implement the proposed rule change on May 6, 2016.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the TRIM3 routing option will no longer be available to all Users. The Exchange has few Users electing the TRIM3 routing option and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support the product. Routing through the Exchange is voluntary and alternative routing options offered by the Exchange as well as other methods remain available to Users that wish to route to BYX, NASDAQ BX, or DRT venues.[13] In addition, the TRIM3 routing option is not core product offering by the Exchange, nor is the Exchange required by the Act to offer such product. Therefore, the Exchange believes the proposed rule change would make its rules clearer and less confusing for investors by removing a routing option that will no longer be offered by the Exchange; thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather avoid investor confusion by eliminating the TRIM3 routing option that is to be discontinued by the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[5] The "System" is the Exchange's electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(aa).

[6] The term "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." *See* Exchange Rule 1.5(cc).

[7] *See* Exchange Rule 11.13(b)(3). The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *Id.*

[8] DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options. *See* Exchange Rule 11.13(b)(3)(D). *See also* Securities Exchange Act Release No. 66324 (February 6, 2012), 77 FR 7642 (February 13, 2012) (SR–BATS–2012–007) (adopting the TRIM3 routing option).

[9] *See e.g.,* Rule 11.13(b)(3)(E) (describing the Destination Specific routing option under which an order checks the System for available shares and then is sent to an away trading center or centers specified by the User).

[10] *See Bats to Decommission ICMT, IOCM, and TRIM3 Routing Strategies,* issued April 18, 2016, *available at http://cdn.batstrading.com/resources/release_notes/2016/Bats-to-Decommission-ICMT-IOCM-and-TRIM3-Routing-Strategies.pdf.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 9 and accompanying text.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow the Exchange to modify its rules in a timely manner by: (i) Eliminating a rule that accounts for services with few subscribers that the Exchange intends to discontinue; and (ii) accurately describing the alternative routing options available to Users, thereby avoiding potential investor confusion during the operative delay period. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–13, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11408 Filed 5–13–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77791; File No. SR–BatsEDGX–2016–14]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 11.22(a) To Implement the Quoting and Trading Provisions of the Regulation NMS Plan To Implement a Tick Size Pilot Program

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2016, Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Exchange Rule 11.22(a) to implement the quoting and trading provisions of the Regulation NMS Plan To Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is substantially similar to a proposed rule change approved by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(a) which also implemented the quoting and trading provisions of the Plan.[5]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, BZX, Chicago Stock Exchange, Inc., Bats BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc., Bats EDGA Exchange, Inc. f/k/a EDGA Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program ("Pilot").[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan[9] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable quoting and trading increments for Pilot Securities.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot securities in the control group will be quoted and traded at the currently permissible increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's[15] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[16] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[17] will apply to the Trade-at requirement.

Compliance With the Quoting and Trading Increments of the Plan

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange is proposing new paragraph (a) to Rule 11.22 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program) to require Members[18] to comply with the quoting and trading provisions of the Plan.

Proposed Rule 11.22(a) (Compliance with Quoting and Trading Restrictions) sets forth the requirements for the Exchange and Members in meeting their obligations under the Plan. Rule 11.22(a)(1) will require Members to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements of the Plan. Rule 11.22(a)(2) provides that the Exchange Systems[19] will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

Proposed Rule 11.22(a)(3) clarifies the treatment of Pilot Securities that drop below $1.00 during the Pilot Period. In particular, Rule 11.22(a)(3) provides that, if the price of a Pilot Security drops below $1.00 during regular trading hours on any trading day, such Pilot Security will continue to be a Pilot Security subject to the Plan. However, if the Closing Price of a Pilot Security on any given trading day is below $1.00, such Pilot Security will be moved out of its Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted for the remainder of the Pilot Period.[20] Rule 11.22(a)(3) also provides that, notwithstanding anything contained within these rules to the contrary, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the data collection requirements of the Plan at all times during the Pilot Period and for the six-month period following the end of the Pilot Period.

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[5] *See* Securities Exchange Act Release No. 77291 (March 3, 2016), 81 FR 12543 (March 9, 2016) (order approving SR–BATS–2015–108).

[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan. The Exchange also proposes supplementary material as part of this proposed rule change to, among other things, provide that the terms used in proposed Rule 11.22 shall have the same meaning as provided in the Plan, unless otherwise specified.

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) ("Approval Order").

[11] The Exchange proposes to add Information and Policy .03 to Rule 11.22 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[16] *See* Section VI(D) of the Plan.

[17] 17 CFR 242.611.

[18] The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." *See* Exchange Rule 1.5(n).

[19] The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

In approving the Plan, the Commission noted that the Participants had proposed additional selection criteria to minimize the likelihood that securities that trade with a share price of $1.00 or less would be included in the Pilot, and stated that, once established, the universe of Pilot Securities should stay as consistent as possible so that the analysis and data can be accurate throughout the Pilot Period.[21] The Exchange notes that a Pilot Security that drops below $1.00 during regular trading hours will remain in its applicable Test Group; a Pilot Security will only be moved to the Control Group if its Closing Price on any given trading day is below $1.00. The Exchange believes that this provision is appropriate because it will help ensure that Pilot Securities in Test Groups One, Two and Three continue to reflect the Pilot's selection criteria, helping ensure the accuracy of the resulting data. The Exchange also believes that this provision is appropriate because it responds to comments that the Plan address the treatment of securities that trade below $1.00 during the Pilot Period.[22]

Proposed Rule 11.22(a)(4) sets forth the applicable limitations for securities in Test Group One. Consistent with the language of the Plan, Rule 11.22(a)(4) provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than $0.05. However, orders priced to execute at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO") [23] and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Participant, SEC and Exchange rules.

Proposed Rule 11.22(a)(5) sets forth the applicable quoting and trading requirements for securities in Test Group Two. This provision states that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

Proposed Rule 11.22(a)(5) also sets forth the applicable trading restrictions for Test Group Two securities. Absent any of the exceptions listed in the Rule, no Member may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.

Consistent with the language of the Plan, the Rule provides that Pilot Securities in Test Group Two may trade in increments of less than $0.05 under the following circumstances: (1) Trading may occur at the midpoint between the NBBO or the PBBO; (2) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO; and (3) Negotiated Trades may trade in increments of less than $0.05.

The Exchange also proposes to add an exception to Rule 11.22(a)(5) to permit Members to fill a customer order in a Pilot Security in Test Group Two at a non-nickel increment to comply with Exchange Rule 12.6 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the Member at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Exchange Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[24]

Thus, the Exchange is proposing to add a customer order protection exception to Rule 11.22(a)(5) that would permit Members to trade Pilot Securities in Test Group Two in increments less than $0.05, and where the Member is executing a customer order to comply with Exchange Rule 12.6 following the execution of a proprietary trade by the Member at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan. The Exchange believes that this approach best facilitates the ability of Members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

Proposed Rule 11.22(a)(6) sets forth the applicable quoting and trading restrictions for Pilot Securities in Test Group Three. The rule provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. The rule also states that, absent any of the applicable exceptions, no Member that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.[25]

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[20] The NYSE, on behalf of the Plan Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. *See* letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 ("October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 ("February Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated March 3, 2016 ("Exemption Letter"). The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request.

[21] *See* Approval Order, *supra* note 10, 80 FR at 27535.

[22] *Id.*

[23] Regulation NMS defines a protected bid or protected offer as a quotation in an NMS stock that (1) is displayed by an automated trading center; (2) is disseminated pursuant to an effective national market system plan; and (3) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. *See* 17 CFR 242.600(57). In the Approval Order, the Commission noted that the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all Trading Centers, whereas the NBBO standard is limited to the single best order in the market. *See* Approval Order, *supra* note 10, 80 FR at 27539.

[24] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

Proposed Rule 11.22(a)(6)(C) sets forth the exceptions pursuant to which Pilot Securities in Test Group Three may trade in increments of less than $0.05. First, trading may occur at the midpoint between the NBBO or PBBO. Second, Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO. Third, Negotiated Trades may trade in increments of less than $0.05.

Similar to that proposed under Rule 11.22(a)(5) described above, the Exchange also proposes to add an exception to Rule 11.22(a)(6) to permit Members to fill a customer order in a Pilot Security in Test Group Three at a non-nickel increment to comply with Exchange Rule 12.6 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the Member at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Exchange Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[26] Thus, the Exchange is proposing to add a customer order protection exception to Rule 11.22(a)(6) that would permit Members to trade Pilot Securities in Test Group Three in increments less than $0.05, and where the Member is executing a customer order to comply with Exchange Rule 12.6 following the execution of a proprietary trade by the Member at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan.

Proposed Rule 11.22(a)(6)(D) sets forth the "Trade-at Prohibition," which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours, absent any of the exceptions set forth in Rule 11.22(a)(6)(D). Consistent with the Plan, the rule reiterates that a Member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A Member that operates a Trading Center that was not displaying a quotation that is the same price as a Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies.

Consistent with the Plan, proposed Rule 11.22(a)(6)(D) also sets forth the exceptions to the Trade-at prohibition, pursuant to which a Member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer. The first exception to the Trade-at Prohibition is the "display exception," which allows a trade to occur at the price of the Protected Quotation, up to the Trading Center's full displayed size, if the order "is executed by a trading center that is displaying a quotation." [27]

In Rule 11.22(a)(6)(D), the Exchange proposes that a Member that utilizes the independent aggregation unit concept may satisfy the display exception only if the same independent aggregation unit that displays interest via either a processor or an SRO Quotation Feed also executes an order in reliance upon this exception. The rule provides that "independent aggregation unit" has the same meaning as provided under Rule 200(f) of SEC Regulation SHO.[28] This provision also recognizes that not all members may utilize the independent aggregation unit concept as part of their regulatory structure, and still permits such members to utilize the display exception if all the other requirements of that exception are met.

As initially proposed by the Participants, the Plan contained an additional condition to the display exception, which would have required that, where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on that national securities exchange; and where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility of such approved facility ("venue limitation").[29] Some commenters stated that this provision was anti-competitive, as it would have forced off-exchange Trading Centers to route orders to the venue on which the order was displayed.[30]

In approving the Plan, the Commission modified the Trade-At Prohibition to remove the venue limitation.[31] The Commission noted that the venue limitation was not prescribed in its Order mandating the filing of the Plan.[32] The Commission also noted that the venue limitation would have unnecessarily restricted the ability of off-exchange market participants to execute orders in Test Group Three Securities, and that removing the venue limitation should mitigate concerns about the cost and complexity of the Pilot by reducing the need for off-exchange Trading Centers to route to the exchange.[33] The Commission also stated that the venue limitation did not create any additional incentives to display liquidity in furtherance of the purposes of the Trade-At Prohibition, because the requirement that a Trading Center could only trade at a protected quotation up to its displayed size should be sufficient to incentivize displayed liquidity.[34]

Consistent with Plan and the SEC's determination to remove the venue limitation, the Exchange is making clear that the display exception applies to trades done by a Trading Center otherwise than on an exchange where the Trading Center has previously displayed a quotation in either an agency or a principal capacity. As part of the display exception, the Exchange also proposes that a Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal, while a Trading Center displaying a quotation as principal (excluding riskless principal) may execute either as principal or agent or riskless principal. The Exchange believes this is consistent with the Plan and the objective of the Trade-at Prohibition, which is to promote the display of liquidity and generally to prevent any Trading Center that is not quoting from price-matching Protected Quotations. Providing that a Trading Center may not execute on a proprietary basis in reliance on a quotation representing customer interest (whether agency or riskless principal) ensures that the Trading Center cannot avoid compliance with the Trade-at Prohibition by trading on a proprietary basis in reliance on a quotation that does not represent such Trading Center's own interest. Where a Trading Center is displaying a quotation at the same price as a Protected Quotation in a proprietary capacity, transactions in any capacity at the price and up to the size of such Trading Center's displayed quotation would be permissible. Transactions executed pursuant to the display exception may occur on the venue on which such quotation is displayed or over the counter.

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[25] A brokered cross trade is a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security. *See* Section I(G) of the Plan.

[26] *See supra* note 24. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[27] *See* Section VI(D)(1) of the Plan.

[28] 17 CFR 242.200. Treatment as an independent aggregation unit is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(ies) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, one independent aggregation unit within a Trading Center cannot execute trades pursuant to the display exception in reliance on quotations displayed by a different independent aggregation unit. As an example, an agency desk of a Trading Center cannot rely on the quotation of a proprietary desk in a separate independent aggregation unit at that same Trading Center.

[29] *See* Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423, 66437 (November 7, 2014).

[30] *See* Approval Order, *supra* note 10, 80 FR at 27540.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

The proposal also excepts Block Size orders[35] and permits Trading Centers to trade at the price of a Protected Quotation, provided that the order is of Block Size at the time of origin and is not an aggregation of non-block orders, broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers.[36] The Plan only provides that Block Size orders shall be exempted from the Trade-At Prohibition. In requiring that the order be of Block Size at the time of origin and not an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers, the Exchange believes that it is providing clarity as to the circumstances under which a Block Size order will be excepted from the Trade-At Prohibition.

Consistent with the Plan, the proposal also excepts an order that is a Retail Investor Order that is executed with at least $0.005 price improvement.

The exceptions set forth in proposed Rule 11.22(a)(6)(D)(ii) d. through n. are based on the exceptions found in Rule 611 of Regulation NMS.[37] The subparagraph d. exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment. The subparagraph e. exception applies to an order that is executed as part of a transaction that was not a "regular way" contract. The subparagraph f. exception applies to an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center. The subparagraph g. exception applies to an order that is executed when a Protected Bid was priced higher than a Protected Offer in a Pilot Security.

The subparagraph h. exception applies when the order is identified as a Trade-at Intermarket Sweep Order. The subparagraph i. exception applies when the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of a Protected Quotation with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. Depending on whether Rule 611 or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (Rule 611), or it could mean that the sender of the ISO has swept protected quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the protected quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 and Trade-at, the Exchange proposes Rule 11.22(a)(6)(D)(ii)(h) so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, *e.g.*, the recipient of that ISO could permissibly trade at the price of the protected quotation.

The Exchange proposes to further clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 11.22(a)(7), a definition of "Trade-at Intermarket Sweep Order." As set forth in the Plan and as noted above, the definition of a Trade-at ISO does not distinguish ISOs that are compliant with Rule 611 from ISOs that are compliant with Trade-at. The Exchange therefore proposes to define a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; (2) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. The Exchange believes that this proposed change will further clarify to recipients of ISOs in Group Three securities whether the ISO satisfies the requirements of Rule 611 or Trade-at.

The exception under subparagraph j. of proposed Rule 11.22(a)(6)(D)(ii) applies when the order is executed as part of a Negotiated Trade. The subparagraph k. exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction.

The exception proposed in subparagraph l. applies to a "stopped order." The stopped order exemption in Rule 611 of SEC Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution."[38] The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution."[39]

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[35] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[36] Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the proposed Trade-at exemption, unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan.

[37] *See* 17 CFR 242.611.

[38] *See* 17 CFR 242.611(b)(9).

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of SEC Regulation NMS and as it is currently proposed for Trade-at, assume the NBB is $10.00 and another protected quote is at $9.95. Under Rule 611 of SEC Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the NBB. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Regulation NMS Rule 611 exception than under the proposed Trade-at exception, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception to ensure that the application of this exception will produce a consistent result under both Regulation NMS and the Plan. The Exchange therefore proposes to amend the stopped order exception to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the NBB, and for a stopped sell order, is equal to or greater than the NBO, as long as such order is priced at an acceptable increment.

Proposed subparagraph l. to Rule 11.22(a)(6)(D)(ii) would define a "stopped order" as an order that is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price, where (1) the stopped order was for the account of a customer; (2) the customer agreed to the specified price on an order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution as long as such order is priced at an acceptable increment.[40]

The subparagraph m. exception applies where the order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

The subparagraph n. exception applies to bona fide errors transactions. Following the adoption of Rule 611 and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 for certain error correction transactions.[41] The Exchange has determined that it is appropriate to incorporate the error correction exception to the Trade-at prohibition, as this exception is equally applicable in the Trade-at context. Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of SEC Regulation NMS.[42]

As with the corresponding exception under Rule 611 of SEC Regulation NMS, the Exchange proposes to define a "bona fide error" as: (i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order. The bona fide error must be evidenced by objective facts and circumstances, the Trading Center must maintain documentation of such facts and circumstances, and the Trading Center must record the transaction in its error account. To avail itself of the exemption, the Trading Center must establish, maintain, and enforce written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center must regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures.[43]

Consistent with the Plan, the final exception to the Trade-At Prohibition and its accompanying supplementary material applies to an order that is for a fractional share of a Pilot Security. The supplementary material provides that such fractional share orders may not be the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or that otherwise were effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan. In approving the Plan, the Commission noted that this exception was appropriate, as there could be potential difficulty in the routing and executing of fractional shares.[44]

The proposed rule change will become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[45] in general, and furthers the objectives of Section 6(b)(5) of the Act[46] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets, and clarifies the provisions of the Plan, and is designed to assist the Exchange and Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to Members, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

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[39] *See* Plan, Section VI(D)(12).

[40] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[41] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[42] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[43] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[44] *See* Approval Order, *supra* note 10, 80 FR at 27541.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the quoting and trading requirements of the Plan will apply equally to all Members that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[47] and paragraph (f)(6) of Rule 19b–4 thereunder,[48] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsEDGX–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–14, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11402 Filed 5–13–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77800; File No. SR–NASDAQ–2016–065]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Limit Up-Limit Down Pricing Program Under Rule 7014

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a proposal to adopt a new Limit Up-Limit Down Pricing Program under Rule 7014 to improve liquidity during Limit Up-Limit Down events through incentive rebates.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[47] 15 U.S.C. 78s(b)(3)(A).

[48] 17 CFR 240.19b–4.

[49] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a new Limit Up-Limit Down Pricing Program under Rule 7014 to improve liquidity during Limit Up-Limit Down events pursuant to Rule 4120(a)(12) through incentive rebates.

Background

On May 6, 2010, the U.S. markets experienced excessive volatility in an abbreviated time period, commonly referred to as the "flash crash." Many of the almost 8,000 equity securities and exchange-traded funds ("ETFs") traded that day experienced rapid price declines and reversals within a short period of time. Staff of the SEC and the U.S. Commodity Futures Trading Commission ("CFTC") (collectively, "Staff") worked together to study the events of the flash crash, issuing a report of their findings ("Report") to the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues ("Committee").[3] Staff observed, among other things, that there was a "liquidity crisis" with respect to individual stocks, whereby market participants widened quote spreads, reduced offered liquidity, or withdrew from the markets altogether.[4] Staff stated that:

> While the withdrawal of a single participant may not significantly impact the entire market, a liquidity crisis can develop if many market participants withdraw at the same time. This, in turn, can lead to the breakdown of a fair and orderly price-discovery process, and in the extreme case trades can be executed at stub-quotes used by market makers to fulfill their continuous two-sided obligations.[5]

The Committee, in turn, issued a series of recommendations based on its analysis of Staff's findings.[6]

In response to the market structure issues uncovered by the flash crash and the recommendations of the Committee, the exchanges and FINRA (collectively, the "SROs") implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. One such measure was the adoption of a pilot plan for stock-by-stock trading pauses by SROs. On May 31, 2012, the SEC approved the National Market System Plan to Address Extraordinary Market Volatility, commonly referred to as the "Limit Up-Limit Down Plan." [7] The Limit Up-Limit Down Plan created a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in "NMS Stocks," as defined in Rule 600(b)(47) of Regulation NMS under the Act.[8] The Limit Up-Limit Down Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands,[9] which are based on a Reference Price [10] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions [11] for the NMS Stock over the immediately preceding five-minute period (except for periods following openings and re-openings). The Price Bands are disseminated by the single plan processor responsible for the consolidation of information for an NMS Stock ("Processor") pursuant to Rule 603(b) of Regulation NMS.

The Limit Up-Limit Down Plan prevents trades in individual NMS Stocks from occurring outside of the Price Bands by applying Limit States,[12] whereby trading is permitted to continue within certain upper and lower limits, and Trading Pauses [13] to accommodate more fundamental price moves in an NMS Stock. An NMS Stock will enter a Limit State if it has a National Best Offer ("NBO") that equals the lower price band and does not cross the National Best Bid ("NBB"), or a NBB that equals the upper price band and does not cross the NBO. When an NMS Stock enters a Limit State, the Processor will disseminate the information by identifying the relevant quotation (*i.e.,* a NBO that equals the Lower Price Band or a NBB that equals the Upper Price Band) as a Limit State Quotation,[14] and ceases to calculate and disseminate updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening. An NMS Stock will exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled, at which time the Processor begins to calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State). If trading for an NMS Stock does not exit a Limit State within fifteen seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause, or at the end of Regular Trading Hours.

The Primary Listing Exchange must declare a Trading Pause if a [sic] NMS Stock does not exit a Limit State within fifteen seconds of entry during Regular Market Hours. The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock if the NMS Stock is in a Straddle State, which is when the NBB is below the Lower Price Band or the NBO is above the Upper Price Band, the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange is responsible for declaring a Trading Pause in an NMS Stock and informing the Processor and during a Trading Pause the Processor disseminates Trading Pause information to the public. During a Trading Pause, no trades in a NMS Stock may occur, but all bids and offers may be displayed. A Trading Pause will conclude in one of two ways. First, if after five minutes from declaration of the Trading Pause the Primary Listing Exchange has not declared a Regulatory Halt, it will initiate established re-opening procedures. The Trading Pause will conclude when the Primary Listing Exchange reports a Reopening Price. Alternatively, a Trading Pause will conclude if the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in a NMS Stock, and has not declared a Regulatory Halt. When trading resumes after a Trading Pause, the Processor then will update the Prices Bands.

The Exchange believes that the Limit Up-Limit Down Plan has been successful at addressing extraordinary volatility in the markets, through its combination of price bands and trading pauses. A fundamental underpinning to re-establishing a less volatile and stable market in times of market stress is liquidity. As quoted above, Staff observed that a liquidity crisis arising from the withdrawal of market participants can lead to the breakdown of a fair and orderly price-discovery process.[15] There is great risk to market participants when markets are volatile and many firms employ their own versions of a trading pause to withdraw from the markets as risk mitigation.[16] In its analysis of the flash crash, Staff observed that the markets suffered significant reductions in liquidity as prices fell, particularly evidenced by a significant reduction in buy-side market depth. The lack of adequate incentives to address such liquidity crisis is a concern of the Committee, which noted in its report that "incentives to display liquidity may be deficient in [a] normal market, and are seriously deficient in turbulent markets."[17] Arising from this concern, the Committee recommended that the CFTC and SEC "consider incentives to supply liquidity that vary with market conditions."[18]

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[3] *See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* "Findings Regarding the Market Events of May 6, 2010," dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[4] *See* Report at 5.

[5] Report at 6.

[6] *See* Summary Report of the Committee, "Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010" (Feb. 18, 2011).

[7] *See* Securities Exchange Act Release No. 34–67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[8] *See* 17 CFR 242.600(b)(47).

[9] As defined by Section I.(N) of the Plan.

[10] As defined by Section I.(T) the Plan.

[11] As defined by Section I.(A) the Plan.

[12] As defined by Section I.(C) the Plan.

[13] As defined by Section I.(Y) the Plan.

[14] As defined by Section I.(D) the Plan.

Proposal

The Exchange is proposing to implement a new rebate program designed to provide incentive to market participants to provide liquidity during Limit States, Straddle States and Trading Pause [sic] in a select group of NMS Stocks chosen by the Exchange ("LULD Liquidity Symbols"). The new incentive program is being proposed in light of the Committee's recommendation that exchanges adopt a "peak load" pricing model as a solution to encouraging liquidity during turbulent markets.[19] In its purest form, a peak load pricing model increases both fees and rebates to improve liquidity. A higher access fee in comparison to other exchanges may discourage entry of aggressive liquidity-removing trades. By contrast, a higher rebate in comparison to other markets may encourage entry of liquidity-providing limit orders. Under Regulation NMS, exchanges are limited in level of access fees that they may assess their members. The Exchange's access fee schedule under Rule 7018(a) provides that, under certain circumstances, removal of displayed liquidity is assessed as the highest permissible rate. As consequence, any additional fee for removal of liquidity would exceed that limit. Exchanges are not so constrained, however, in level of rebate provided for liquidity.

The Exchange agrees with the Committee that more must be done to encourage liquidity during times of market stress, and providing market participants with incentives to provide liquidity may further that goal. While the Exchange is limited in the level of fee-based disincentives that it can assess for liquidity removal during turbulent markets, the Exchange is able to adopt incentives to address the Committee's concern that there are insufficient incentives to market participants to provide displayed liquidity in such markets. Specifically, the Exchange is proposing to provide two new incentives that are focused on promoting liquidity when a LULD Liquidity Symbol is in a Limit State, Straddle State, or a Trading Pause.[20] The Exchange has selected a group of 200 LULD Liquidity Symbols that are Exchange-listed stocks and ETFs of various sizes based on market capitalization. In selecting the securities, the Exchange first considered how individual Exchange-listed securities were impacted on particularly volatile days, and when a Limit State, Straddle State or Trading Pause occurred, with a particular focus on liquidity. From this pool of potential LULD Liquidity Symbols, the Exchange next eliminated very low volume stocks that frequently have LULD bands based on bid-ask midpoint rather than a trade price. Last, the Exchange used stratified random sampling of the remaining pool of potential LULD Liquidity Symbols to assure that the stocks represented a wide range of market capitalization levels. The Exchange may add to or modify the list of securities covered by the Limit Up-Limit Down Pricing Program. To the extent the Exchange determines to modify the list of LULD Liquidity Symbol, it will file a rule change proposal with the Commission. In selecting new LULD Liquidity Symbols, the Exchange will apply the same criteria used in selecting the initial group of LULD Liquidity Symbols.

First, for LULD Liquidity Symbol securities priced $1 or more the Exchange is adopting an incentive in the form of a $0.0010 per share executed rebate to Exchange market makers that enter displayed orders to buy (other than Designated Retail Orders, as defined in Rule 7018) when the LULD Liquidity Symbol security enters a Limit State based on an NBO that equals the lower price band and does not cross the NBB ("Limit Down Limit State"). To be eligible, the market maker must be registered as a market maker for the LULD Liquidity Symbol. The Exchange believes the incentive will promote liquidity in LULD Liquidity Symbols during times of significant price declines in those securities, which is typically a time when buy liquidity is scarce. The rebate will be provided to all buy orders entered by an Exchange market maker priced at or higher than the Lower Price Band of the Limit Down Limit State entered after initiation thereof until its conclusion, and that add liquidity at any time during continuous trading.[21] Similarly, for LULD Liquidity Symbol securities priced $1 or more the Exchange will provide the $0.0010 per share executed rebate to Exchange market makers that enter displayed orders to buy (other than Designated Retail Orders, as defined in Rule 7018) when the LULD Liquidity Symbol security enters a Straddle State based on an NBB that is below the lower price band ("Limit Down Straddle State"). To be eligible, the market maker must be registered as a market maker for the LULD Liquidity Symbol. The rebate will be provided to all buy orders entered by an Exchange market maker priced at or higher than the Lower Price Band of the Limit Down Straddle State entered after initiation thereof until its conclusion, and that receive an execution any time after the order is entered during regular market hours, except for executions received in subsequent Halt Crosses or Closing Cross. The Exchange will use the time that it receives the message from the Processor that a LULD Liquidity Symbol is in a Limit Down Limit State or Limit Down Straddle State as the time at which the rebate is available, and the message from the Processor that the security has emerged from the Limit Down Limit State or Limit Down Straddle State as the time at which the rebate is no longer available.

The following is an example of how the rebate will be applied. For this example market maker refers to an Exchange market maker registered in symbol ABC. Assume symbol ABC has a lower price band of $10.00 and is a LULD Liquidity Symbol. Further assume the Exchange is the only market with a displayed offer at $10.00 for 300 shares and the Exchange has received the message from the Processor that ABC is in a Limit Down Limit State. Market maker #1 enters a 1,000 share displayable buy order priced at $10.00. Market maker #1's order trades against the 300 shares offered and the remaining 700 shares post to the Exchange's book at $10.00. The Bid on the Exchange is now $10.00. The 700 shares from market maker #1 are eligible to receive the additional $0.0010 rebate per share executed when adding liquidity. Market maker #2 enters a 200 share displayable buy order at $10.00. The 200 shares are also eligible to receive the additional $0.0010 rebate when adding liquidity. The Exchange receives the message from the Processor that the security has emerged from the Limit Down Limit State. Market maker #3 enters a 100 share displayable buy order at $10.00. The 100 shares are not eligible to receive the additional $0.0010 rebate since the Exchange has already received the message from the Processor that the security has emerged from the Limit Down Limit State. Market maker #1 and #2's posted orders are still eligible to receive the $0.0010 per share rebate if the orders add liquidity at a later point.

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[15] *See Supra* note 6.

[16] *See* Report at 36.

[17] *See Supra* note 6 at 9.

[18] *Id.*

[19] *Id.*

[20] The Exchange notes that nothing proposed in this rule change will alter how the Exchange handles quotes and orders in compliance with Regulation NMS, including member obligations with respect to avoiding quotes and orders that lock or cross the markets.

[21] Orders are considered to have added liquidity if they are posted on the Exchange book and are executed during continuous trading. Executions during a Halt, IPO, Open, and Closing Crosses are note considered to have added or removed liquidity.

Second, the Exchange is proposing to provide an incentive to all market participants that enter Orders in an LULD Liquidity Symbol during a Trading Pause and receive an execution of that Order. The Exchange will provide a $0.0005 per share executed rebate, which will be provided upon execution of the eligible Order in the reopening process at the conclusion of the Trading Pause. The rebate will be provided in lieu of the fee assessed under Rule 7018(f) for execution of quotes and orders executed halt crosses.[22] Unlike the proposed $0.0010 per share executed rebate, which focuses on providing incentive to Exchange Market Makers to provide liquidity when the price of a LULD Liquidity Symbol has dropped significantly, this proposed $0.0005 per share executed rebate targets all market participants during a Trading Pause. The Exchange will use the time at which it declares a Trading Pause in the LULD Liquidity Symbol up to the point at which it completes the halt cross in the security as the time during which orders are eligible to receive the $0.0005 per share executed rebate

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[23] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As a general principle, the Exchange applies rebates and reduced fees in an effort to promote beneficial market-improving behavior among market participants. Under Rule 7014, the Exchange currently provides four Market Quality Incentive Programs that are designed to improve the markets by providing rebates and reduced fees as incentive to market participants. The proposed Limit Up-Limit Down Pricing Program is consistent with these other market-improving programs because it is designed to promote liquidity when liquidity is scarce and most needed. The proposed program is also consistent with recommendations made by the Committee to support trading during events when there is a shortage of liquidity. The Exchange is proposing to offer the program for a period no less than six months from its adoption so that it can measure the effectiveness of the rebates.

Market Maker Rebate

The Exchange believes that the proposed $0.0010 per share executed rebate is reasonable because it rewards market makers for providing liquidity when the price of a security is falling significantly and many market participants have withdrawn. As discussed above, a stock that is in a Limit Down Limit State or Limit Down Straddle State has experienced a significant drop in a relatively short time. It has been the Exchange's observation that Limit Down Limit States and Limit Down Straddle States on the lower band are often characterized by a significant disparity between the number of buyers and sellers. Orders that provide buy side liquidity promote price discovery and help to normalize trading. The proposed rebate is designed to support buy side liquidity during Limit Down Limit States and Limit Down Straddle States in LULD Liquidity Symbols by providing market makers with an incentive to provide bids at or above the Limit Down Price band. The proposed rebate may also provide incentive to Members to register as market makers in the LULD Liquidity Symbols so that they may avail themselves of the rebate, thereby potentially improving overall market quality in such securities. Moreover, the Exchange believes that the proposed $0.0010 per share executed rebate is reasonable because it is consistent with rebates of other market quality incentive programs under Rule 7014. While the Exchange acknowledges that the $0.0010 per share executed rebate is significantly higher than provided by most incentive programs under Rule 7014, which provide additional rebates ranging from $0.0001 to $0.0004 per share executed, the Exchange notes that the Lead Market Maker ("LMM") Program under Rule 7014 provides rebates in Qualified Securities to LMMs for adding displayed liquidity ranging from $0.0040 to $0.0046 per share executed, depending on the qualification criteria met.[25] The rebate under the LMM Program is provided in lieu of the rebates provided under Rule 7018(a) for providing displayed liquidity, which are as high as $0.00305 per share executed. Thus, the lowest effective rebate available to a LMM under the LMM Program is $0.00095 ($0.0040—$0.00305). Consequently, the Exchange believes that the proposed $0.0010 per share executed rebate is reasonable because it is similar to the rebates provided under the LMM Program.

The Exchange believes that the proposed rebate is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the same rebate to all similarly situated market makers. The Exchange believes that limiting the $0.0010 per share executed rebate to registered market makers is an equitable allocation and is not unfairly discriminatory because the incentive may encourage Members to register as market makers in LULD Liquidity Symbols. Market makers have certain quoting and pricing obligations[26] for the securities in which they are registered; however, such obligations do not require them to enter buy orders priced at or higher than the Lower Price Band of the Limit Down Limit State or Limit Down Straddle State. The proposed $0.0010 per share executed rebate is designed to incentivize market makers to provide liquidity in LULD Liquidity Symbols for which they are registered as market makers at a price higher than they would otherwise be obligated in order to satisfy their market making obligations. Moreover, an increased number of market makers registered in LULD Liquidity Symbols may increase the potential for improved liquidity in LULD Liquidity Symbols during Limit States, and may improve overall market quality in LULD Liquidity Symbols because of market makers' quoting and pricing obligations, which would benefit all market participants that trade LULD Liquidity Symbols.

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[22] Under Rule 7018(f), a member is assessed a $0.0010 per share executed fee for any quote or order that receives an execution in a halt cross, which includes a Limit Up-Limit Down trading pause halt cross.

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(4) and (5).

[25] *See* Rule 7014(d) and (e).

Trading Pause Rebate

The Exchange believes that the proposed $0.0005 per share executed rebate provided to members that enter Orders in a LULD Liquidity Symbol during a Trading Pause and receive an execution of that Order is reasonable because it may provide incentive to all market participants to provide liquidity during a Trading Pause in the securities of the program. The Exchange believes that all participants that provide liquidity during a Trading Pause should be rewarded for taking on the risk of entering orders during a volatile market. These orders promote price discovery, which may in turn help reestablish normal trading in a security covered by the program. Moreover, the Exchange believes that the proposed $0.0005 per share executed rebate is reasonable because it is consistent with rebates of other market quality incentive programs under Rule 7014, which provide additional rebates ranging from $0.0001 to $0.0004 per share executed. Unlike those rebates, which are provided in addition to any fee or other rebate the member may receive under Rule 7018, the proposed $0.0005 per share executed rebate is provided in lieu of the $0.0010 per share executed fee assessed for executions in halt crosses, including a Limit Up-Limit Down trading pause halt cross. As a consequence, a member that qualifies for the proposed new rebate will receive a net benefit of $0.0015 per share executed. The Exchange notes that this net benefit is similar to the net benefit provided LMMs under the LMM Program. Specifically, an LMM that meets the highest performance criteria under the LMM Program is eligible to receive no charge for executions in the Halt Cross, Opening Cross and Closing Cross. In certain circumstances, a member may be assessed a charge of $0.0015 per share executed for participation in the Opening and Closing Crosses. Thus, the net benefit provided by the proposed $0.0005 per share executed rebate is reasonable. The Exchange believes that the proposed $0.0005 per share executed rebate is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the rebate to all members that provide orders during a Trading Pause in a LULD Liquidity Symbol that receive an execution

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is offering rebates in an effort to improve market quality during times of high volatility. The Exchange does not believe that the proposed change will place a burden on inter-market competition because the Limit Up-Limit Down Pricing Program is designed to improve market quality for all market participants by promoting price discovery for LULD Liquidity Symbols that have triggered Limit Up-Limit Down processes, and other exchanges are free to offer similar programs. If successful, the proposed Limit Up-Limit Down Pricing Program may promote competition among exchanges to provide incentives of their own to address low liquidity in NMS Stocks during a Limit Up-Limit Down process. Further, the Exchange does not believe that the proposed incentive program imposes a burden on competition among market participants because participation in the market during a Limit Up-Limit Down Limit State, Straddle State, or Trading Pause is completely voluntary. Moreover, the proposed incentive program will not be a burden on competition among market participants because the Exchange is offering a rebate to all members that qualify under the program. The Exchange notes that it is limiting the $0.0010 per share executed rebate to Exchange market makers registered in LULD Liquidity Symbols as an incentive to such market makers to provide liquidity priced better than they otherwise would be required to do so as market makers. In addition, the proposal may incentivize market participants to register as market makers with the Exchange. Providing incentive to members to become market makers will benefit all market participants trading in LULD Liquidity Symbols for the reasons discussed above. In this regard, all member firms may register as market makers in the LULD Liquidity Symbols if they choose to meet the qualification criteria. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[26] Rule 4613 requires market maker to be willing to buy and sell a security that it is registered as such on a continuous basis during regular market hours and to enter and maintain a two-sided trading interest that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Exchange market makers must also adhere to certain pricing obligations in their registered securities, as established by Rule 4613.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–065. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2016–065 and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11411 Filed 5–13–16; 8:45 am]

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[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77795; File No. SR–ISE Gemini–2016–05]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction Involving Its Indirect Parent

May 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2016 ISE Gemini, LLC (the "Exchange" or "ISE Gemini") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is hereby filing with the U.S. Securities and Exchange Commission ("Commission") a proposed rule change (the "Proposed Rule Change") in connection with a proposed business transaction (the "Transaction") involving the Exchange's ultimate, indirect, non-U.S. upstream owners, Deutsche Börse AG ("Deutsche Börse") and Eurex Frankfurt AG ("Eurex Frankfurt"), and Nasdaq, Inc. ("Nasdaq"). Nasdaq is the parent company of The NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ PHLX LLC ("Phlx Exchange"), NASDAQ BX, Inc. ("BX Exchange"), Boston Stock Exchange Clearing Corporation ("BSECC") and Stock Clearing Corporation of Philadelphia ("SCCP").[3] Upon completion of the Transaction (the "Closing"), the Exchange's indirect parent company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), will become a direct subsidiary of Nasdaq. The Exchange will therefore become an indirect subsidiary of Nasdaq and, in addition to the Exchange's current affiliation with International Securities Exchange, LLC ("ISE") and ISE Mercury, LLC ("ISE Mercury"), an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. Nasdaq will become the ultimate parent of the Exchange.[4]

In order to effect the Transaction, the Exchange hereby seeks the Commission's approval of the following: (i) That certain corporate resolutions that were previously established by entities that will cease to be non-U.S. upstream owners of the Exchange after the Transaction will cease to be considered rules of the Exchange upon Closing; (ii) that certain governing documents of Nasdaq will be considered rules of the Exchange upon Closing; (iii) that the Third Amended and Restated Trust Agreement (the "Trust Agreement") that currently exists among International Securities Exchange Holdings, Inc. ("ISE Holdings"), U.S. Exchange Holdings, and the Trustees (as defined therein) with respect to the "ISE Trust" will cease to be considered rules of the Exchange upon Closing and, thereafter, that the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust; (iv) to amend and restate the Second Amended and Restated Certificate of Incorporation of ISE Holdings ("ISE Holdings COI") to eliminate provisions relating to the Trust Agreement and the ISE Trust and, in this respect, to reinstate certain text of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings; (v) to amend and restate the Second Amended and Restated Bylaws of ISE Holdings (the "ISE Holdings Bylaws") to waive certain voting and ownership restrictions in the ISE Holdings COI to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction; and (vi) to amend and restate the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings COI") to eliminate references therein to the Trust Agreement.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[4] The Exchange's current affiliates, ISE and ISE Mercury, have submitted nearly identical proposed rule changes. *See* SR–ISE–2016–11 and SR–ISEMercury–2016–10.

The Exchange requests that the Proposed Rule Change become operative at the Closing of the Transaction. The text of the proposed rule change is available at the Commission's Public Reference Room and on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of various changes to the organizational and governance documents of the Exchange's current owners and related actions that are necessary in connection with the Closing of the Transaction, as described below. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.[5] The Exchange would continue to be registered as a national securities exchange, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of NASDAQ Exchange, Phlx Exchange and BX Exchange as well as from its current affiliates, ISE and ISE Mercury. Neither the Exchange nor its current affiliates engage in clearing securities transactions, nor would they do so after the Transaction. Additionally, the Exchange would continue to be a separate self-regulatory organization ("SRO").

1. Current Ownership Structure of the Exchange

On December 17, 2007, ISE Holdings, the sole, direct parent of the Exchange, became a direct, wholly-owned subsidiary of U.S. Exchange Holdings.[6] U.S. Exchange Holdings is 85% directly owned by Eurex Frankfurt and 15% directly owned by Deutsche Börse. Eurex Frankfurt is a wholly-owned, direct subsidiary of Deutsche Börse.[7] Deutsche Börse therefore owns 100% of U.S. Exchange Holdings through its aggregate direct and indirect ownership.

2. The Transaction

On March 9, 2016, a Stock Purchase Agreement (the "Agreement") was entered into among Deutsche Börse, Eurex Frankfurt and Nasdaq. Pursuant to and subject to the terms of the Agreement, at the Closing, Deutsche Börse and Eurex Frankfurt will sell, transfer and deliver to Nasdaq, and Nasdaq will purchase, the capital stock of U.S. Exchange Holdings.

3. Post-Closing Ownership Structure of the Exchange

As a result of the Transaction, Nasdaq will directly own 100% of the equity interest of U.S. Exchange Holdings. U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will remain the sole, direct owner of the Exchange. The Exchange will therefore become an indirect subsidiary of Nasdaq and Nasdaq will become the ultimate parent of the Exchange. The Exchange will become an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. As a result of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be owners of the Exchange. The Exchange will therefore cease to have any Non-U.S. Upstream Owners. The Transaction will not have any effect on ISE Holdings' direct ownership of the Exchange. However, consummation of the Transaction is subject to approval of this Proposed Rule Change by the Commission, as described below.

4. Non-U.S. Upstream Owner Resolutions

Deutsche Börse and Eurex Frankfurt, as the Non-U.S. Upstream Owners of the Exchange, have previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange. Specifically, each of such Non-U.S. Upstream Owners has adopted resolutions ("Non-U.S. Upstream Owner Resolutions"), which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.[8] For example, the resolution of each of such Non-U.S. Upstream Owners provides that it shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange. In addition, the resolution of each of such Non-U.S. Upstream Owners provides that the board members, including each person who becomes a board member, would so consent to comply and cooperate and the particular Non-U.S. Upstream Owner would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate, to the extent that he or she is involved in the activities of the Exchange.

Section 19(b) of the Act,[9] and Rule 19b–4 thereunder,[10] require an SRO to file proposed rule changes with the Commission. Although the Non-U.S. Upstream Owners are not SROs, the Non-U.S. Upstream Owner Resolutions have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[11] As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange after the Transaction, the Exchange proposes that the resolutions of Deutsche Börse and Eurex

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[5] If the Exchange determines to make any such changes, it will seek the approval of the Commission only after the approval of this Proposed Rule Change to the extent required by the Securities Exchange Act of 1934, as amended ("Act"), the Commission's rules thereunder, or the Exchange's rules.

[6] *See* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

[7] *See* Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (SR–ISE–2012–21). Each of Deutsche Börse and Eurex Frankfurt is referred to as a "Non-U.S. Upstream Owner" and collectively as the "Non-U.S. Upstream Owners."

[8] *See* Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10–209) (Order Approving Topaz Exchange, LLC for Registration as a National Securities Exchange). The Exchange was originally named "Topaz Exchange, LLC."

[9] 15 U.S.C. 78s(b).

[10] 17 CFR 240.19b–4.

[11] *See* File No. 10–209, *supra* note 8.

Frankfurt will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[12]

5. Nasdaq Governing Documents

Nasdaq will become the ultimate parent of the Exchange upon the Closing of the Transaction. As described above, section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the Exchange's existing U.S. upstream owners are not SROs, their governing documents have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[13] The Exchange proposes that the Nasdaq Amended and Restated Certificate of Incorporation ("Nasdaq COI") and the Nasdaq Bylaws ("Nasdaq Bylaws, and together with the Nasdaq COI, the "Nasdaq governing documents") will become stated policies, practices, or interpretations of the Exchange as of the Closing and, therefore, will be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[14]

The Nasdaq Bylaws contain certain provisions regarding ownership, jurisdiction, books and records, and other issues, with respect to Nasdaq, as well as its board members, officers, employees, and agents (as applicable), relating to Nasdaq's control of any "Self-Regulatory Subsidiary" (*i.e.*, any subsidiary of Nasdaq that is an SRO as defined under section 3(a)(26) of the Act).[15] The Exchange would be a "Self-Regulatory Subsidiary" of Nasdaq upon the Closing of the Transaction. The provisions in the Nasdaq Bylaws are comparable to the provisions of the Non-U.S. Upstream Owners Resolutions, including in the following manner:

- Giving due regard to the preservation of the independence of the self-regulatory function of each of Nasdaq's Self-Regulatory Subsidiaries.[16]
- Maintaining the confidentiality of all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that comes into Nasdaq's possession, which shall not be used for any non-regulatory purposes; making such books and records available for inspection and copying by the Commission; and maintaining such books and records relating to each Self-Regulatory Subsidiary in the United States.[17]
- To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of Nasdaq shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[18]
- Compliance by Nasdaq with the U.S. federal securities laws and the rules and regulations thereunder, cooperation by Nasdaq with the Commission and Nasdaq's Self-Regulatory Subsidiaries, and reasonable steps by Nasdaq necessary to cause its agents to cooperate with the Commission and, where applicable, the Self-Regulatory Subsidiaries pursuant to their regulatory authority.[19]
- Consent by Nasdaq and its officers, Directors, and employees to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary.[20]
- Reasonable steps by Nasdaq necessary to cause its current and future officers, Directors, and employees, to consent in writing to the applicability to them of certain provisions of the Nasdaq Bylaws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary.[21]
- Approval by the Commission under section 19 of the Act prior to any resolution of the Nasdaq Board to approve an exemption for any person from the ownership limitations of the Nasdaq COI.[22]
- Filing with, or filing with and approval by, the Commission (as the case may be) under section 19 of the Act prior to amending the Nasdaq COI or the Nasdaq Bylaws.[23]

The Exchange believes that the provisions in the Nasdaq Bylaws should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.[24]

Additionally, and similar to the ISE Holdings COI, the Nasdaq COI imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes of Nasdaq in excess of 5% of the securities generally entitled to vote may vote the shares in excess of 5%.[25] This limitation would mitigate the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchange, and it facilitates the Exchange's and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board may approve exemptions from the 5% voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under section 3(a)(39) of the Act,[26] provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its SRO subsidiary.[27] Further, any such exemption from the 5% voting limitation would not be effective until approved by the Commission pursuant to section 19 of the Act.[28]

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[12] The "Form of German Parent Corporate Resolutions" is attached hereto as Exhibit 5A. As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of Deutsche Börse and Eurex Frankfurt also would cease accordingly. Resolution 11 provides that, notwithstanding any provision of the resolutions, before: (a) Any amendment to or repeal of any provision of this or any of the resolutions; or (b) any action that would have the effect of amending or repealing any provision of the resolutions shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. In addition, Deutsche Börse, Eurex Frankfurt, U.S. Exchange Holdings, ISE Holdings, and ISE previously became parties to an agreement to provide for adequate funding for the Exchange's regulatory responsibilities. The Exchange subsequently became a party to the agreement along with ISE Mercury. This agreement will be terminated upon the Closing of the Transaction.

[13] *See* File No. 10–209, *supra* note 8.

[14] The Nasdaq COI dated January 24, 2014 is attached hereto as Exhibit 5B along with subsequent amendments thereto dated November 17, 2014 and September 8, 2015 and the Certificate of Elimination of the Series A Convertible Preferred Stock dated January 27, 2014. The Nasdaq Bylaws are attached hereto as Exhibit 5C.

[15] 15 U.S.C. 78c(a)(26).

[16] Nasdaq Bylaws Section 12.1(a) (Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries).

[17] Nasdaq Bylaws Section 12.1(b).

[18] Nasdaq Bylaws Section 12.1(c).

[19] Nasdaq Bylaws section 12.2(a) (Cooperation with the Commission). The officers, Directors, and employees of Nasdaq, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and the self-regulatory functions and responsibilities of the Self-Regulatory Subsidiaries. Nasdaq Bylaws Section 12.2(b).

[20] Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

[21] Nasdaq Bylaws Section 12.4 (Further Assurances).

[22] Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

[23] Nasdaq Bylaws section 12.6 (Amendments to the Certificate of Incorporation); Nasdaq Bylaws Section 11.3 (Review by Self-Regulatory Subsidiaries).

[24] The U.S. Exchange Holdings COI also includes similar provisions, including that U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the "Ownership Limit" and the "Voting Limit." *See* U.S. Exchange Holdings COI, Articles TENTH through SIXTEENTH. The U.S. Exchange Holdings COI provides that U.S. Exchange Holdings will notify the Exchange's Board if any "Person," either alone or together with its "Related Persons," at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares of U.S. Exchange Holdings. *See* SR–ISE–2007–101, *supra* note 6, at 71981.

6. Trust Agreement [29]

The ISE Holdings COI currently contains certain ownership limits ("Ownership Limits") and voting limits ("Voting Limits") with respect to the outstanding capital stock of ISE Holdings.[30] The Trust Agreement was entered into in 2007 to provide for an automatic transfer of ISE Holdings shares to a trust (the "ISE Trust") if a Person [31] were to obtain an ownership or voting interest in ISE Holdings in excess of these Ownership Limits and Voting Limits, through ownership of one of the Non-U.S. Upstream Owners, without obtaining the approval of the Commission. In this regard, the Trust Agreement serves four general purposes: (i) To accept, hold and dispose of Trust Shares [32] on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event [33] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option; [34] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary [35] as provided in section 4.2(h) therein. The ISE Trust, and corresponding Trust Agreement, is the mechanism by which the Ownership Limits and Voting Limits in the ISE Holdings COI currently would be protected in the event that a Non-U.S. Upstream Owner purportedly transfers any related ownership or voting rights other than in accordance with the ISE Holdings COI.

As described above, section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, the Trust Agreement has previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore is considered rules of the Exchange.[36] The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (*e.g.*, U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange proposes that the Trust Agreement will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[37] The Exchange also proposes that, as of the Closing of the Transaction, the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

7. ISE Holdings COI

The ISE Holdings COI was amended in 2007 in relation to the ownership of ISE by Deutsche Börse.[38] At that time, provisions were added to the ISE Holdings COI relating to the ISE Trust to provide for an automatic transfer of ISE Holdings' shares to the ISE Trust if a Person were to obtain an ownership or voting interest in ISE Holdings in excess of Voting Limits and Ownership Limits, without obtaining the approval of the Commission.

As described above, the Exchange is proposing that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.

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[25] *See* Article FOURTH, Section C of the Nasdaq COI.

[26] 15 U.S.C. 78c(a)(39).

[27] *See* Article FOURTH, section C.6. of the Nasdaq COI. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to an facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

[28] *See* Section 12.5 of the Nasdaq Bylaws.

[29] The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein). By its terms, the Trust Agreement originally related solely to ISE Holdings' ownership of ISE, and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. In 2010, the Commission approved proposed rule changes that revised the Trust Agreement to replace references to ISE with references to any Controlled National Securities Exchange. *See* Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) and 61498 (February 4, 2010), 75 FR 7299 (February 18, 2010) (SR–ISE–2009–90); see also ISE Trust Agreement, Articles I and II, Sections 1.1 and 2.6. Thus, the ISE Trust Agreement also applies to ISE Gemini and ISE Mercury.

[30] *See* Article FOURTH, Section III of the ISE Holdings COI.

[31] *See* SR–ISE–2007–101, *supra* note 6. Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

[32] Under the Trust Agreement, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be. The term "Excess Shares" means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the ISE Holdings COI, through, for example, ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term "Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[33] Under the Trust Agreement, the term "Material Compliance Event" means, with respect to a Non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions (*i.e.*, as referenced in note 7) in any material respect.

[34] Under the Trust Agreement, the term "Call Option" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[35] Under the Trust Agreement, the term "Trust Beneficiary" means U.S. Exchange Holdings.

[36] *See* File No. 10–209, *supra* note 8.

[37] The current Trust Agreement is attached hereto as Exhibit 5D. Section 8.2 of the Trust Agreement provides, in part, that, for so long as ISE Holdings controls, directly or indirectly, the Exchange, before any amendment or repeal of any provision of the Trust Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of the Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. The Exchange notes that, according to the terms of the Trust Agreement, sections 6.1 and 6.2 thereof, which relate to limits on disclosure of confidential information and certain permitted disclosure, will survive the termination of the Trust Agreement for a period of ten years.

[38] *See* SR–ISE–2007–101, *supra* note 6.

Accordingly, the Exchange proposes to remove provisions relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.[39] The Exchange proposes to reinstate certain provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.[40]

The changes to the ISE Holdings COI proposed herein would describe the corrective treatment of "Excess Shares" (*i.e.,* any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits). The proposed changes would apply corrective procedures if any Person, alone or together with its Related Persons, purports to sell, transfer, assign or pledge any shares of ISE Holdings stock in violation of the Ownership Limits. Specifically, any such sale, transfer, assignment or pledge would be void, and that number of shares in excess of the Ownership Limits would be deemed to have been transferred to ISE Holdings, as "Special Trustee" of a "Charitable Trust" for the exclusive benefit of a "Charitable Beneficiary" to be determined by ISE Holdings.[41] These corrective procedures also would apply if there is any other event causing any holder of ISE Holdings stock to exceed the Ownership Limits, such as a repurchase of shares by ISE Holdings. The automatic transfer would be deemed to be effective as of the close of business on the business day prior to the date of the violative transfer or other event. The Special Trustee of the Charitable Trust would be required to sell the Excess Shares to a person whose ownership of shares is not expected to violate the Ownership Limits, subject to the right of ISE Holdings to repurchase those shares. The proposed changes to the ISE Holdings COI are as follows:[42]

- The Exchange proposes to delete the current provisions in Article Fourth, Sections III(a)(ii), III(a)(iii) and III(b)(i) of the ISE Holdings COI that provide that the ISE Holdings Board of Directors shall deliver to the ISE Trust copies of certain written notice and updates thereto currently required under Sections III(a)(ii) and III(a)(iii) of Article FOURTH (*i.e.,* if any Person at any time owns, of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then outstanding Voting Shares).
- The Exchange proposes to adopt new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, which would provide that, notwithstanding any other provisions contained in the ISE Holdings COI, to the fullest extent permitted by applicable law, any shares of capital stock of ISE Holdings (whether such shares are common stock or preferred stock) not entitled to be voted due to the restrictions set forth in Section III(b)(i) of Article FOURTH of the ISE Holdings COI (and not waived by the ISE Holdings Board of Directors and approved by the Commission pursuant to Section III(b)(i) of Article FOURTH of the ISE Holdings COI), shall not be deemed to be outstanding for purposes of determining a quorum or a minimum vote required for the transaction of any business at any meeting of stockholders of ISE Holdings, including, without limitation, when specified business is to be voted on by a class or a series voting as a class.
- As a result of the addition of new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, the Exchange proposes to renumber current Article FOURTH, Section III(b)(iii) as resulting Article FOURTH, section III(b)(iv).
- The Exchange proposes several changes to Article FOURTH, section III(c) of the ISE Holdings COI, which relates to violations of any Ownership Limits or Voting Limits and the treatment of Excess Shares, including the following:
- Addition of new text relating to the designation as "Excess Shares" for any shares held in excess of the relevant Ownership Limits; such designation and treatment being effective as of the close of business on the business day prior to the date of the purported transfer or other event leading to such Excess Shares.[43]
- Deletion of current text requiring notification to the ISE Trust upon the occurrence of certain events and the transfer of Voting Shares to the ISE Trust.[44]
- Addition of new text describing the treatment of "Excess Shares" upon any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits. Specifically, the Exchange proposes within new Article FOURTH, section III(c)(i) of the ISE Holdings COI that any such purported event shall be void ab initio as to such Excess Shares, and the intended transferee shall acquire no rights in such Excess Shares. Such Excess Shares shall be deemed to have been transferred to ISE Holdings (or to an entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning such Excess Shares), as Special Trustee of the Charitable Trust for the exclusive benefit of the Charitable Beneficiary or Beneficiaries.[45]

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[39] The proposed, amended ISE Holdings COI is attached hereto as Exhibit 5E. Capitalized terms used to describe the ISE Holdings COI that are not otherwise defined herein shall have the meanings prescribed in the ISE Holdings COI. Article FOURTEENTH of the ISE Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the ISE Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[40] *See, e.g.,* Exhibit 5A to SR–ISE–2007–101, *supra* note 6. *See also* Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR–ISE–2004–29), through which ISE, which was organized as a corporation at that time (*i.e.,* "ISE, Inc."), amended its Certificate of Incorporation and Constitution at that time in connection with ISE's then-contemplated initial public offering. ISE subsequently reorganized into a holding company structure, whereby it became a limited liability company, as it is so organized currently, and whereby ISE Holdings became the sole owner of ISE. *See* Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR–ISE–2006–04). As a result, and at the time of the reorganization, ISE eliminated the "ISE, Inc." Certificate of Incorporation and Constitution. The ISE Holdings COI and ISE Holdings Bylaws were introduced at that time and included substantially the same ownership and voting limitations that had been contained in the ISE, Inc. Certificate of Incorporation and Constitution.

[41] ISE Holdings may also determine to appoint as "Special Trustee" any entity that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings. Currently, the ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains ownership or voting interest in ISE Holdings in excess of the Ownership Limits or Voting Limits or in the event of a Material Compliance Event. *See* SR–ISE–2007–101, *supra* note 6, for a discussion of the ISE Trust, including the operation thereof.

[42] The Exchange is not proposing any changes to the actual Ownership Limits or Voting Limits specified in the current ISE Holdings COI. *See* Article FOURTH, sections III(a) and III(b) of the ISE Holdings COI. The Exchange proposes to delete certain defined terms from the ISE Holdings COI, such as "ISE Trust," "Trust Beneficiary" and "Trustee," and replace them with new defined terms within the ISE Holdings COI, such as "Charitable Trust," "Charitable Beneficiary" and "Special Trustee." The Exchange also proposes to renumber certain sections of the ISE Holdings COI to account for proposed new and deleted sections therein.

[43] *See* resulting Article FOURTH, section III(c).

[44] *Id.*

[45] *See* proposed Article FOURTH, section III(c)(ii). The "Charitable Beneficiary" would be one or more organizations described in sections 170(b)(1)(A) or 170(c) of the Internal Revenue Code of 1986, as amended from time to time. The "Charitable Trust" would be the trust established for the benefit of the Charitable Beneficiary for

- Addition of new text describing the treatment of dividends or other distributions paid with respect to Excess Shares.[46]
- Addition of new text describing the handling of any distribution of assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of ISE Holdings.[47]
- Addition of new text describing the authority of the Special Trustee with respect to rescinding as void any votes cast by a purported transferee or holder of Excess Shares as well as recasting of votes in accordance with the desires of the Special Trustee acting for the benefit of ISE Holdings.[48]
- Addition of new text describing the sale by the Special Trustee, to a Person or Persons designated by the Special Trustee whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, of Excess Shares transferred to the Charitable Trust, within 20 days of receiving notice from ISE Holdings that Excess Shares have been so transferred.[49] Existing text would be deleted that requires the Trustees of the ISE Trust to use their commercially reasonable efforts to sell the Excess Shares upon receipt of written instructions from the ISE Trust Beneficiary. New text also would be added describing the handling of any proceeds of such a sale.
- Addition of new text describing that Excess Shares shall be deemed to have been offered for sale to ISE Holdings on the date of the transaction or event resulting in such Excess Shares.[50]
- Deletion of current Article FOURTH, section III(c)(v), which currently relates to the ISE Trust Beneficiary's right to reacquire Excess Shares from the ISE Trust under certain circumstances.

The Exchange is not proposing to reinstate all of the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings, as certain of such text would continue to not be applicable, even after the Transaction, given the Exchange's resulting ownership. For example, prior to Deutsche Börse's ownership of ISE Holdings, the ISE Holdings COI contained certain provisions that dealt with the publicly-traded nature of ISE Holdings' stock. This text was removed from the ISE Holdings COI upon Deutsche Börse's ownership of ISE Holdings, as ISE Holdings' stock ceased to be publicly-traded.[51] Therefore, the Exchange is not proposing to reinstate the following provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings relating to:

- Regulation 14A under the Act (pertaining to solicitations of proxies).
- the treatment of transactions of ISE Holdings stock on or through the facilities of any national securities exchange or national securities association.
- inspection of the ISE Holdings accounts and records by ISE Holdings stockholders.
- stockholder voting to amend, repeal or adopt provisions of the ISE Holdings COI or the ISE Holdings Bylaws.
- stockholder action called at annual or special meetings of stockholders.
- nominations for directors and the election thereof.

The Exchange also is not proposing to reinstate the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings that related to changes in terminology used throughout the ISE Holdings COI.[52] Additionally, provisions of the ISE Holdings COI that authorize shares of capital stock of ISE Holdings have been amended since Deutsche Börse acquired ownership of ISE Holdings.[53] The Exchange does not propose to amend the text of the ISE Holdings COI relating to share authorization. The Exchange also does not propose to reinstate the location or specific wording of text of the ISE Holdings COI that was adjusted or relocated upon Deutsche Börse's ownership of ISE Holdings, but that otherwise has the same practical effect and meaning as it did prior to Deutsche Börse's ownership of ISE Holdings.

7. U.S. Exchange Holdings COI

The Exchange proposes to remove the reference to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI. As proposed herein, the Trust Agreement will cease to be considered rules of the Exchange as of the Closing of the Transaction and would be repealed in connection with the Transaction. The Exchange also proposes to retitle the document as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings and update the effective date thereof.[54]

8. ISE Holdings Bylaws

The ISE Holdings COI Voting Limits restrict any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings. The ISE Holdings COI Ownership Limits restrict any person, either alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[55]

The ISE Holdings COI and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if the board makes the following three findings: (1) The waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an exchange under the Act and the rules thereunder; (2) the waiver is otherwise in the best interests of ISE Holdings, its stockholders, and the Exchange; and (3) the waiver will not impair the ability of the Commission to enforce the Act. However, the board of directors may not waive these voting and ownership restrictions as they apply to Exchange members. In

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which ISE Holdings is the trustee. The "Special Trustee" would be ISE Holdings, in its capacity as trustee for the Charitable Trust, any entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings.

[46] *See* proposed Article FOURTH, section III(c)(iii).

[47] *See* proposed Article FOURTH, section III(c)(iv).

[48] *See* proposed Article FOURTH, section III(c)(v).

[49] *See* proposed Article FOURTH, section III(c)(vi).

[50] *See* proposed Article FOURTH, section III(c)(vii).

[51] *See* Exhibit 5A to SR–ISE–2007–101, *supra* note 6.

[52] For example, the ISE Holdings COI currently refers to Delaware General Corporation Law as "DGCL." The Exchange would not reinstate the prior "GCL" term that was used in the ISE Holdings COI.

[53] *See, e.g.,* Securities Exchange Act Release No. 73860 (December 17, 2014), 79 FR 77066 (December 23, 2014) (SR–ISE–2014–44).

[54] The proposed, amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5F. Article SIXTEENTH of the U.S. Exchange Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the U.S. Exchange Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The Exchange also proposes to amend the U.S. Exchange Holdings COI to consistently refer to such document as the "Restated Certificate," which is a defined term therein.

[55] *See* ISE Holdings COI, Article FOURTH, section III.

addition, the board of directors may not waive these voting and ownership restrictions if such waiver would result in a person subject to a "statutory disqualification" owning or voting shares above the stated thresholds. Any waiver of these voting and ownership restrictions must be by way of an amendment to the Bylaws approved by the board of directors, which amendment must be approved by the Commission.[56]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.[57] In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the Proposed Rule Change to the Commission. In so waiving the applicable voting and ownership restrictions, the board of directors of ISE Holdings has determined, with respect to Nasdaq, that: (i) Such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Act and the rules promulgated thereunder; [58] (ii) such waiver is otherwise in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange, or facility thereof; [59] (iii) such waiver will not impair the ability of the Commission to enforce the Act; [60] (iv) neither Nasdaq nor any of its Related Persons (as that term is defined in the ISE Holdings COI) are subject to any applicable "statutory disqualification" (within the meaning of section 3(a)(39) of the Act); and (v) neither Nasdaq nor any of its Related Persons is a member (as such term is defined in section 3(a)(3)(A) of the Act) of such Controlled National Securities Exchange.

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. In addition, the Transaction will not impair the ability of the Exchange's, or any facility thereof, to carry out their respective functions and responsibilities under the Act and will not impair the ability of the Commission to enforce the Act. The Exchange therefore seeks approval of the waiver described herein with respect to the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.

Summary

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Transaction will not impair the ability of ISE Holdings, the Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Act with respect to the Exchange. As such, the Commission's plenary regulatory authority over the Exchange will not be affected by the approval of this Proposed Rule Change. The Exchange is requesting approval by the Commission of changes proposed herein in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act,[61] in general, and furthers the objectives of section 6(b)(1) of the Act,[62] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this Proposed Rule Change furthers the objectives of section 6(b)(5) [63] of the Act because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the Proposed Rule Change will continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors.

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[56] *See* ISE Holdings COI, Article FOURTH, sections III(a)(i) and III(b)(i). Such amendment to Holdings Bylaws must be filed with and approved by the Commission under section 19(b) of the Act and become effective thereunder. In this regard, section 10.1 of the Bylaws provides that the Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors of ISE Holdings or meeting of the stockholders. With respect to each national securities exchange controlled, directly or indirectly, by ISE Holdings (the "Controlled National Securities Exchanges"), or facility thereof, before any amendment to or repeal of any provision of the Bylaws of ISE Holdings shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[57] The proposed, amended ISE Holdings Bylaws are attached hereto as Exhibit 5G. The proposed amendment to the ISE Holdings Bylaws would also clarify that Eurex Global Derivatives AG or "EGD," which is referenced in section 11.2 of the ISE Holdings Bylaws, ceased to be an Upstream Owner of the Exchange as a result of a prior transaction that did not require an amendment to the ISE Holdings Bylaws. *See* Securities Exchange Act Release No. 73530 (November 5, 2014), 79 FR 77066 (December 17, 2014) (SR–ISE–2014–44).

[58] For example, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.

[59] For example, the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services.

[60] For example, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Commission will continue to have appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

[61] 15 U.S.C. 78s(b).

[62] 15 U.S.C. 78s(b)(1).

[63] 15 U.S.C. 78f(b)(5).

Approval of this Proposed Rule Change will enable ISE Holdings to continue its operations and the Exchange to continue its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Exchange expects that the Transaction will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Transaction will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Transaction will contribute to streamlined and efficient operations, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

Furthermore, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

The Exchange believes it is consistent with the Act to allow Nasdaq to become the ultimate parent of the Exchange. Neither Nasdaq nor any of its related persons is subject to any statutory disqualification or is a Member of the Exchange. Moreover, the Nasdaq governing documents include certain provisions designed to maintain the independence of the Exchange's self-regulatory functions. Accordingly, the Exchange believes that Nasdaq's acquisition of ultimate ownership and exercise of voting control of the Exchange will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

Although Nasdaq will not carry out regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. Nasdaq's governing documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of sections 6(b) and 19(g) of the Act,[64] and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. For example, the Nasdaq governing documents provide that Nasdaq will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Exchange. Also, each board member, officer, and employee of Nasdaq, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the Exchange. In discharging his or her responsibilities as a board member of Nasdaq, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that Nasdaq's actions would have on the ability of the Exchange to carry out its responsibilities under the Act. In addition, Nasdaq, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange.

Further, Nasdaq (along with its respective board members, officers, and employees) and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the Exchange and not use such information for any non-regulatory purposes.

In addition, Nasdaq's books and records relating to the activities of the Exchange will at all times be made available for, and books and records of U.S. Exchange Holdings will be subject at all times to, inspection and copying by the Commission and the Exchange. Books and records of U.S. Exchange Holdings related to the activities of the Exchange also will continue to be maintained within the U.S. Moreover, for so long as Nasdaq directly or indirectly controls the Exchange, the books, records, officers, directors (or equivalent), and employees of Nasdaq shall be deemed to be the books, records, officers, directors, and employees of the Exchange.

To the extent involved in the activities of the Exchange, Nasdaq, its board members, officers, and employees irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange. Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the U.S., to the extent such directors, officers, or employees are involved in the activities of the Exchange, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange.

The Nasdaq governing documents, the U.S. Exchange Holdings COI, and the U.S. Exchange Holdings Bylaws require that any change thereto must be submitted to the Exchange's Board. If such change must be filed with, or filed with and approved by, the Commission under section 19 of the Act and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission. This requirement to submit changes to the Exchange's Board continues for so long as Nasdaq or U.S. Exchange

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[64] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

Holdings, as applicable, directly or indirectly, control the Exchange.

As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange upon the Closing of the Transaction, the Exchange believes that its proposal that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (*e.g.*, U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws section 12.5). Accordingly, the Exchange believes that its proposal that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

Given the Exchange's proposal to repeal the Trust Agreement and dissolve the ISE Trust, the Exchange believes that the proposed changes to the ISE Holdings COI are consistent with the Act. The proposed changes would delete provisions of the ISE Holdings COI that will no longer be relevant and would reinstate certain provisions of the ISE Holdings COI that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[65] the Exchange believes that the Proposed Rule Change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members.

The Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.[66] In this regard, the Exchange notes that the Exchange, and its affiliates ISE and ISE Mercury, function only as options trading markets—they do not function as equity trading markets or as clearing agencies, as do certain of Nasdaq's existing subsidiaries.

The Exchange believes that there is considerable support for a finding that the Transaction is consistent with the Act with respect to competition. 14 exchanges currently compete for options trading business. Exchanges compete on technology, market model, trading venue, fees and fee structure. Additionally, low switching costs allow customers to easily move to another exchange, which customers do regularly, as reflected in constantly varying market shares among the existing exchange operators. In addition, the Commission has approved several, new registered options exchanges in recent history, which highlights an increase in competition in the market for listed options trading.[67]

The Exchange believes that the Transaction will not change the competitive landscape for listed options trading and the changes proposed herein are consistent with other recent Commission approvals. For example, a similar proposed combination of Deutsche Börse and NYSE Euronext in 2011 received Commission approval and would have resulted in a combined greater than 40% market share of listed options volume among its three, respective options exchanges (based on 2010 data).[68] Similarly, as a result of the Transaction, the options exchanges owned by Nasdaq would account for approximately 41% aggregate market share of listed options volume.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change; or

(B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (***http://www.sec.gov/rules/sro.shtml***); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2016–05 on the subject line.

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[65] 15 U.S.C. 78f(b)(8).

[66] *See, e.g.,* Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR–CBOE–2011–107 and SR–NSX–2011–14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR–NYSE–2005–77); Securities Exchange Act Release No. 71449 (Jan. 30, 2014), 79 FR 6961 (Feb. 05, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43); Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72).

[67] *See, e.g.,* Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order approving application for exchange registration of ISE Mercury, LLC); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (Order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (Order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (Order approving rules governing the trading of options on the BATS Options Exchange).

[68] *See* Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEGemini–2016–05. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2016–05, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11406 Filed 5–13–16; 8:45 am]

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[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77798; File No. SR–FINRA–2016–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 4554, Alternative Trading Systems—Recording and Reporting Requirements of Order and Execution Information for NMS Stocks

May 10, 2016.

I. Introduction

On February 29, 2016, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require alternative trading systems ("ATSs") to submit additional order information to FINRA. The proposed rule change was published for comment in the **Federal Register** on March 7, 2016.[3] The Commission received one comment letter on the proposal.[4] On April 22, 2016, FINRA responded to the comment letter.[5] This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposed Rule 4554 to impose additional reporting requirements on trading venues that have filed a Form ATS with the Commission.[6] The proposal is intended to enhance FINRA's order-based surveillance by requiring ATSs to report additional ATS-specific order information for NMS stocks.[7] While ATSs submit order information to FINRA under the Order Audit Trail System ("OATS") rules,[8] there is order information not currently required to be reported to OATS, such as order re-pricing events and order display and reserve size information, which FINRA needs so that it can more fully reconstruct an ATS's order book and perform certain order-based surveillance.

Specifically, proposed Rule 4554 sets forth four categories of reporting requirements: (1) Data to be reported by all ATSs at the time of order receipt; (2) data to be reported by all ATSs at the time of order execution; (3) data to be reported by ATSs that display subscriber orders; and (4) data to be reported by ATSs that are registered as ADF Trading Centers. The proposed requirements would apply to order and execution information for NMS stocks. ATSs would be required to report this information to FINRA consistent with current OATS reporting requirements.

Reporting Requirements for Receipt of Orders

Proposed Rule 4554 would require, among other things, each ATS to indicate on all orders received whether it displays subscriber orders outside of the ATS (other than to ATS employees).[9] This information will enable FINRA to distinguish between ATSs that display orders outside the ATS ("display ATS"), either to subscribers or through consolidated quote data, and ATSs that do not display orders outside the ATS ("non-display ATS").[10] A display ATS would also be required to indicate whether the order book is displayed to subscribers only, or distributed for publication in the consolidated quotation data.

Each ATS would also be required to indicate whether it is an ADF Trading Center as defined in Rule 6220, whether a specific order can be routed away from the ATS for execution, and whether there are any counter-party restrictions on the order. ATSs would also be required to provide FINRA with a unique identifier representing the specific order type.[11] ATSs will be required to provide FINRA with a list of all of their order types twenty days before the order types become effective, and if the ATS makes any subsequent changes to its order types, twenty days before the changes become effective, which will enable FINRA to map the identifier to a specific order type.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77269 (March 1, 2016), 81 FR 11851 (March 7, 2016) ("Notice"). On April 15, 2016, the Commission extended the time period for Commission action on the proposed rule change until June 3, 2016. *See* Securities Exchange Act Release No. 77635 (April 15, 2016), 81 FR 23536 (April 21, 2016).

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated April 1, 2016 ("SIFMA Letter").

[5] *See* Letter from Andrew Madar, Associate General Counsel, FINRA, dated April 22, 2016 ("FINRA Response Letter").

[6] *See* 17 CFR 242.300(a).

[7] *See* 17 CFR 242.600(b)(47).

[8] For example, upon receipt of an order, a member must report the number of shares to which the order applies, any limit or stop price prescribed in the order, special handling requests, and the time at which the order is received. *See* FINRA Rule 7440(b). Upon the modification or execution of an order, the member must report the time of modification or execution, whether the order was fully or partially executed, the number of unexecuted shares remaining if the order was only partially executed, and the execution price. *See* FINRA Rule 7440(d).

[9] The proposed requirements apply to any alternative trading system, as defined in Rule 300(a)(1) of SEC Regulation ATS, that has filed a Form ATS with the SEC and is subject to FINRA's OATS and equity trade reporting rules. *See* 17 CFR 242.300(a)(1).

For purposes of this rule, the term "order" includes a broker-dealer's proprietary quotes that are transmitted to an ATS.

[10] If an ATS meets the applicable volume thresholds, it is required to make its best bid and best offer available for publication in the consolidated quotation data. *See* 17 CFR 242.301(b)(3).

An ATS also would be required to report, for all orders, the NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS captured the effective NBBO (or relevant reference price); as part of this report, the ATS must identify the market data feed it used to obtain the NBBO (or relevant reference price). These two data elements will enable FINRA to ascertain if the NBBO changed between the time of order receipt and the time the ATS captured the effective NBBO.[13] Finally, each ATS would be required to provide the sequence number assigned to the order event by the ATS's matching engine.

Reporting Requirements for Execution of Orders

The second category of proposed changes applies to all ATSs when reporting the execution of an order to OATS. Specifically, each ATS must record and report the NBBO (or relevant reference price) in effect at the time of order execution, and the timestamp of when the ATS captured the effective NBBO (or relevant reference price). An ATS must identify the market data feed used by the ATS to obtain the NBBO (or other reference price).[14]

Reporting Requirements for Display ATSs

The third category of changes applies only to display ATSs and requires that those ATSs report the following order receipt information: (1) Whether the order is hidden or displayable; (2) display quantity; (3) reserve quantity, if applicable; (4) displayed price; and (5) the price entered. If the matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report the time of the modification and the applicable new display price or size. FINRA stated that it needs this information from display ATSs to have an accurate, time sequenced audit trail to reconstruct the displayed market and noted that the pricing and size changes are being displayed to others.[15]

Reporting Requirements for ADF Trading Centers

Finally, FINRA proposed to require ADF Trading Centers to report the quote identifier provided to the ADF if a change to the displayed size or price of an order resulted in a new quote being transmitted to the ADF. If an order held by the ADF Trading Center becomes associated with a quote identifier based on an action by the matching engine related to a different order(s), (*e.g.*, another order is cancelled making the order being held the best priced order in the matching engine), the ADF Trading Center must provide FINRA the new quote identifier.

III. Comment Letter

The Commission received one comment letter[16] on the proposal and a response to the comment letter from FINRA.[17] The commenter suggested that FINRA amend the proposal to eliminate the requirement for ATSs to submit NBBO timestamp information to OATS.[18] The commenter sought clarification that the proposal does not require an ATS to report the time it actually received the NBBO, but would require the time the ATS's matching engine took the action to evaluate the NBBO after receiving or executing an order. According to the commenter, many ATS matching engines receive only the price changes in the NBBO, and not volume changes, to avoid unnecessary trading latency. Therefore, a comparison of the time the NBBO was received to the time of order receipt or execution could show significant time lag, which the commenter believes could give FINRA the impression that an ATS is not regularly updating its quotes.[19] In addition, with regard to the proposed requirement to identify the market data feed used by the ATS to record the NBBO (or other reference price), the commenter believes that FINRA should specify a list of market data feed types that should be used to populate the field, and that the best approach would be to designate general categories, such as "SIP," "direct," "hybrid," and "third party vendor."[20]

In its response to these comments, FINRA clarified that an ATS would comply with this NBBO timestamp requirement by reporting the time the ATS captured the NBBO, and not the time the ATS actually received the NBBO. In regard to the requirement to identify the market data feed used by the ATS to record the NBBO (or other reference price), FINRA stated that it will consider the commenter's suggestion when developing the technical specifications to implement the proposal.[21]

The commenter also suggested that FINRA eliminate the requirement to submit order type information to OATS and the corresponding requirement for ATSs to provide FINRA with advance notice of order types and changes.[22] The commenter stated that because the Commission has proposed new requirements for ATSs that trade NMS stocks,[23] including a requirement to provide advance notice of changes to order types, "FINRA should not use this proposal to get ahead of the Commission's final action."[24]

In its response to these comments, FINRA noted that the order type requirement set forth in its proposal is independent of the Commission's proposed action with respect to order types, and that FINRA has fully explained and justified its requirement in the proposal. FINRA stated that the reference to the Commission's proposed action was solely for background purposes. In addition, FINRA believes that the 20-day advance notice requirement is consistent with current reporting obligations under Regulation ATS and thus would not increase the reporting burden on ATSs.[25]

Finally, the commenter requested clarification on technical reporting aspects of counter-party restrictions and sequence numbers.[26] Specifically, the commenter requested that FINRA clarify if ATSs must report counter-party restrictions on a "yes/no" basis or if specific counter-party restrictions must be reported. In addition, the commenter requested that FINRA clarify if ATSs must report the sequence number a specific ATS's matching engine assigns, or if all ATSs must adopt a uniform method of assigning sequence numbers.

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[11] This requirement would not apply to market and limit orders that have no other handling instructions.

[12] FINRA will provide a deadline prior to the implementation date by which current ATSs must submit lists of their existing order types. *See* Notice at 11851.

[13] *See* Notice at 11852.

[14] If for any reason, the ATS uses a feed other than the one that was reported on its ATS data submission, the ATS must notify FINRA via email of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

[15] *See* Notice at 11852.

[16] *See supra,* note 4.

[17] *See supra,* note 5.

[18] *See* SIFMA Letter at 1.

[19] *See id.* at 2.

[20] *See id.*

[21] *See* FINRA Response Letter at 3.

[22] *See* SIFMA Letter at 3.

[23] *See* Securities and Exchange Release No. 76474 (November 18, 2015), 80 FR 80998 (December 28, 2015). The Commission's proposal, among other things, would require ATSs to provide advance notice of material changes to the operation of an ATS, including changes to order types.

[24] *See* SIFMA Letter at 3.

[25] *See* FINRA Response Letter at 3.

[26] *See* SIFMA Letter at 4.

In its response to these comments, FINRA clarified that the requirement to identify any counter-party restrictions is a yes or no response, and that the ATS would not be required to provide the specific counter-party restriction.[27] In addition, FINRA clarified that it is not mandating a particular or uniform format by which ATSs must report sequence numbers, and that requiring an ATS to report the sequence number as it currently exists in the ATS will satisfy this requirement.[28]

IV. Discussion and Commission Findings

After careful review of the proposal, the comment letter received, and FINRA's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[29] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.

The Commission believes that the stated objectives of the proposal—to enhance FINRA's ability to surveil activity occurring within an ATS, and by extension FINRA's ability to surveil for potentially abusive algorithmic trading activity more generally across markets—are consistent with the purposes of the Act and with FINRA's responsibility to enforce compliance by its members with its rules and with the Act. The additional information provided by ATSs will better enable FINRA to reconstruct an ATS order book and more effectively conduct quotation-based surveillance. FINRA will integrate the additional information into its surveillance patterns to support the generation and analysis of alerts, which will increase FINRA's ability to detect a wide range of potential market-specific and cross-market manipulative activities.

The Commission further believes that applying this proposal to NMS stocks is consistent with the Act because the potentially abusive trading activity that the proposal is designed to detect is of particular concern with respect to NMS stocks. The Commission believes that gaps in ATS order book data should be addressed in the near-term to ensure effective surveillance of ATSs and, by extension, abusive algorithmic trading activity more generally across markets. The Commission believes that FINRA adequately responded to the issues raised in the comment letter.

Accordingly, for the reasons discussed above, the Commission finds that the proposed rule change is consistent with Section 15A of the Act.

V. Conclusion

It Is Therefore Ordered pursuant to Section 19(b)(2) of the Act[31] that the proposed rule change (SR–FINRA–2016–010) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11409 Filed 5–13–16; 8:45 am]

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[27] *See* FINRA Response Letter at 4.

[28] *See id.* at 4–5.

[29] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78*o*–3(b)(6).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77792; File No. SR–BatsEDGA–2016–08]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc. f/k/a EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 11.21(a) To Implement the Quoting and Trading Provisions of the Regulation NMS Plan To Implement a Tick Size Pilot Program

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2016, Bats EDGA Exchange, Inc. f/k/a EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Exchange Rule 11.21(a) to implement the quoting and trading provisions of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is substantially similar to a proposed rule change approved by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(a) which also implemented the quoting and trading provisions of the Plan.[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, BZX, Chicago Stock Exchange, Inc., Bats BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc., Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 77291 (March 3, 2016), 81 FR 12543 (March 9, 2016) (order approving SR–BATS–2015–108).

Commission, pursuant to Section 11A of the Act [6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program ("Pilot").[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan [9] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable quoting and trading increments for Pilot Securities.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot securities in the control group will be quoted and traded at the currently permissible increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's [15] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[16] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS [17] will apply to the Trade-at requirement.

Compliance With the Quoting and Trading Increments of the Plan

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange is proposing new paragraph (a) to Rule 11.21 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program) to require Members [18] to comply with the quoting and trading provisions of the Plan.

Proposed Rule 11.21(a) (Compliance with Quoting and Trading Restrictions) sets forth the requirements for the Exchange and Members in meeting their obligations under the Plan. Rule 11.21(a)(1) will require Members to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements of the Plan. Rule 11.21(a)(2) provides that the Exchange Systems [19] will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

Proposed Rule 11.21(a)(3) clarifies the treatment of Pilot Securities that drop below $1.00 during the Pilot Period. In particular, Rule 11.21(a)(3) provides that, if the price of a Pilot Security drops below $1.00 during regular trading hours on any trading day, such Pilot Security will continue to be a Pilot Security subject to the Plan. However, if the Closing Price of a Pilot Security on any given trading day is below $1.00, such Pilot Security will be moved out of its Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted for the remainder of the Pilot Period.[20] Rule 11.21(a)(3) also provides that, notwithstanding anything contained within these rules to the contrary, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the data collection requirements of the Plan at all times during the Pilot Period and for the six-month period following the end of the Pilot Period.

In approving the Plan, the Commission noted that the Participants had proposed additional selection criteria to minimize the likelihood that securities that trade with a share price of $1.00 or less would be included in the Pilot, and stated that, once established, the universe of Pilot Securities should stay as consistent as possible so that the analysis and data can be accurate throughout the Pilot

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[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan. The Exchange also proposes supplementary material as part of this proposed rule change to, among other things, provide that the terms used in proposed Rule 11.21 shall have the same meaning as provided in the Plan, unless otherwise specified.

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) ("Approval Order").

[11] The Exchange proposes to add Information and Policy .03 to Rule 11.21 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[16] *See* Section VI(D) of the Plan.

[17] 17 CFR 242.611.

[18] The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." *See* Exchange Rule 1.5(n).

[19] The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

[20] The NYSE, on behalf of the Plan Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. *See* letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 ("October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 ("February Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated March 3, 2016 ("Exemption Letter"). The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request.

Period.[21] The Exchange notes that a Pilot Security that drops below $1.00 during regular trading hours will remain in its applicable Test Group; a Pilot Security will only be moved to the Control Group if its Closing Price on any given trading day is below $1.00. The Exchange believes that this provision is appropriate because it will help ensure that Pilot Securities in Test Groups One, Two and Three continue to reflect the Pilot's selection criteria, helping ensure the accuracy of the resulting data. The Exchange also believes that this provision is appropriate because it responds to comments that the Plan address the treatment of securities that trade below $1.00 during the Pilot Period.[22]

Proposed Rule 11.21(a)(4) sets forth the applicable limitations for securities in Test Group One. Consistent with the language of the Plan, Rule 11.21(a)(4) provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than $0.05. However, orders priced to execute at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO")[23] and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Participant, SEC and Exchange rules.

Proposed Rule 11.21(a)(5) sets forth the applicable quoting and trading requirements for securities in Test Group Two. This provision states that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

Proposed Rule 11.21(a)(5) also sets forth the applicable trading restrictions for Test Group Two securities. Absent any of the exceptions listed in the Rule, no Member may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.

Consistent with the language of the Plan, the Rule provides that Pilot Securities in Test Group Two may trade in increments of less than $0.05 under the following circumstances: (1) Trading may occur at the midpoint between the NBBO or the PBBO; (2) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO; and (3) Negotiated Trades may trade in increments of less than $0.05.

The Exchange also proposes to add an exception to Rule 11.21(a)(5) to permit Members to fill a customer order in a Pilot Security in Test Group Two at a non-nickel increment to comply with Exchange Rule 12.6 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the Member at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Exchange Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[24]

Thus, the Exchange is proposing to add a customer order protection exception to Rule 11.21(a)(5) that would permit Members to trade Pilot Securities in Test Group Two in increments less than $0.05, and where the Member is executing a customer order to comply with Exchange Rule 12.6 following the execution of a proprietary trade by the Member at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan. The Exchange believes that this approach best facilitates the ability of Members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

Proposed Rule 11.21(a)(6) sets forth the applicable quoting and trading restrictions for Pilot Securities in Test Group Three. The rule provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. The rule also states that, absent any of the applicable exceptions, no Member that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.[25]

Proposed Rule 11.21(a)(6)(C) sets forth the exceptions pursuant to which Pilot Securities in Test Group Three may trade in increments of less than $0.05. First, trading may occur at the midpoint between the NBBO or PBBO. Second, Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO. Third, Negotiated Trades may trade in increments of less than $0.05.

Similar to that proposed under Rule 11.21(a)(5) described above, the Exchange also proposes to add an exception to Rule 11.21(a)(6) to permit Members to fill a customer order in a Pilot Security in Test Group Three at a non-nickel increment to comply with Exchange Rule 12.6 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the Member at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Exchange Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[26] Thus, the Exchange is proposing to add a customer order protection exception to Rule 11.21(a)(6) that would permit Members to trade Pilot Securities in Test Group Three in increments less than $0.05, and where the Member is executing a customer order to comply with Exchange Rule 12.6 following the execution of a proprietary trade by the Member at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan.

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[21] *See* Approval Order, *supra* note 10, 80 FR at 27535.

[22] *Id.*

[23] Regulation NMS defines a protected bid or protected offer as a quotation in an NMS stock that (1) is displayed by an automated trading center; (2) is disseminated pursuant to an effective national market system plan; and (3) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. *See* 17 CFR 242.600(57). In the Approval Order, the Commission noted that the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all Trading Centers, whereas the NBBO standard is limited to the single best order in the market. *See* Approval Order, *supra* note 10, 80 FR at 27539.

[24] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[25] A brokered cross trade is a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security. *See* Section I(G) of the Plan.

[26] *See supra* note 22. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

Proposed Rule 11.21(a)(6)(D) sets forth the "Trade-at Prohibition," which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours, absent any of the exceptions set forth in Rule 11.21(a)(6)(D). Consistent with the Plan, the rule reiterates that a Member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A Member that operates a Trading Center that was not displaying a quotation that is the same price as a Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies.

Consistent with the Plan, proposed Rule 11.21(a)(6)(D) also sets forth the exceptions to the Trade-at prohibition, pursuant to which a Member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer. The first exception to the Trade-at Prohibition is the "display exception," which allows a trade to occur at the price of the Protected Quotation, up to the Trading Center's full displayed size, if the order "is executed by a trading center that is displaying a quotation." [27]

In Rule 11.21(a)(6)(D), the Exchange proposes that a Member that utilizes the independent aggregation unit concept may satisfy the display exception only if the same independent aggregation unit that displays interest via either a processor or an SRO Quotation Feed also executes an order in reliance upon this exception. The rule provides that "independent aggregation unit" has the same meaning as provided under Rule 200(f) of SEC Regulation SHO.[28] This provision also recognizes that not all members may utilize the independent aggregation unit concept as part of their regulatory structure, and still permits such members to utilize the display exception if all the other requirements of that exception are met.

As initially proposed by the Participants, the Plan contained an additional condition to the display exception, which would have required that, where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on that national securities exchange; and where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility of such approved facility ("venue limitation").[29] Some commenters stated that this provision was anti-competitive, as it would have forced off-exchange Trading Centers to route orders to the venue on which the order was displayed.[30]

In approving the Plan, the Commission modified the Trade-At Prohibition to remove the venue limitation.[31] The Commission noted that the venue limitation was not prescribed in its Order mandating the filing of the Plan.[32] The Commission also noted that the venue limitation would have unnecessarily restricted the ability of off-exchange market participants to execute orders in Test Group Three Securities, and that removing the venue limitation should mitigate concerns about the cost and complexity of the Pilot by reducing the need for off-exchange Trading Centers to route to the exchange.[33] The Commission also stated that the venue limitation did not create any additional incentives to display liquidity in furtherance of the purposes of the Trade-At Prohibition, because the requirement that a Trading Center could only trade at a protected quotation up to its displayed size should be sufficient to incentivize displayed liquidity.[34]

Consistent with Plan and the SEC's determination to remove the venue limitation, the Exchange is making clear that the display exception applies to trades done by a Trading Center otherwise than on an exchange where the Trading Center has previously displayed a quotation in either an agency or a principal capacity. As part of the display exception, the Exchange also proposes that a Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal, while a Trading Center displaying a quotation as principal (excluding riskless principal) may execute either as principal or agent or riskless principal. The Exchange believes this is consistent with the Plan and the objective of the Trade-at Prohibition, which is to promote the display of liquidity and generally to prevent any Trading Center that is not quoting from price-matching Protected Quotations. Providing that a Trading Center may not execute on a proprietary basis in reliance on a quotation representing customer interest (whether agency or riskless principal) ensures that the Trading Center cannot avoid compliance with the Trade-at Prohibition by trading on a proprietary basis in reliance on a quotation that does not represent such Trading Center's own interest. Where a Trading Center is displaying a quotation at the same price as a Protected Quotation in a proprietary capacity, transactions in any capacity at the price and up to the size of such Trading Center's displayed quotation would be permissible. Transactions executed pursuant to the display exception may occur on the venue on which such quotation is displayed or over the counter.

The proposal also excepts Block Size orders [35] and permits Trading Centers to trade at the price of a Protected Quotation, provided that the order is of Block Size at the time of origin and is not an aggregation of non-block orders, broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers.[36]

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[27] *See* Section VI(D)(1) of the Plan.

[28] 17 CFR 242.200. Treatment as an independent aggregation unit is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(ies) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, one independent aggregation unit within a Trading Center cannot execute trades pursuant to the display exception in reliance on quotations displayed by a different independent aggregation unit. As an example, an agency desk of a Trading Center cannot rely on the quotation of a proprietary desk in a separate independent aggregation unit at that same Trading Center.

[29] *See* Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423, 66437 (November 7, 2014).

[30] *See* Approval Order, *supra* note 10, 80 FR at 27540.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[36] Once a Block Size order or portion of such Block Size order is routed from one Trading Center

The Plan only provides that Block Size orders shall be exempted from the Trade-At Prohibition. In requiring that the order be of Block Size at the time of origin and not an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers, the Exchange believes that it is providing clarity as to the circumstances under which a Block Size order will be excepted from the Trade-At Prohibition.

Consistent with the Plan, the proposal also excepts an order that is a Retail Investor Order that is executed with at least $0.005 price improvement.

The exceptions set forth in proposed Rule 11.21(a)(6)(D)(ii) d. through n. are based on the exceptions found in Rule 611 of Regulation NMS.[37] The subparagraph d. exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment. The subparagraph e. exception applies to an order that is executed as part of a transaction that was not a "regular way" contract. The subparagraph f. exception applies to an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center. The subparagraph g. exception applies to an order that is executed when a Protected Bid was priced higher than a Protected Offer in a Pilot Security.

The subparagraph h. exception applies when the order is identified as a Trade-at Intermarket Sweep Order. The subparagraph i. exception applies when the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of a Protected Quotation with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. Depending on whether Rule 611 or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (Rule 611), or it could mean that the sender of the ISO has swept protected quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the protected quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 and Trade-at, the Exchange proposes Rule 11.21(a)(6)(D)(ii)(h) so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, *e.g.,* the recipient of that ISO could permissibly trade at the price of the protected quotation.

The Exchange proposes to further clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 11.21(a)(7), a definition of "Trade-at Intermarket Sweep Order." As set forth in the Plan and as noted above, the definition of a Trade-at ISO does not distinguish ISOs that are compliant with Rule 611 from ISOs that are compliant with Trade-at. The Exchange therefore proposes to define a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; (2) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. The Exchange believes that this proposed change will further clarify to recipients of ISOs in Group Three securities whether the ISO satisfies the requirements of Rule 611 or Trade-at.

The exception under subparagraph j. of proposed Rule 11.21(a)(6)(D)(ii) applies when the order is executed as part of a Negotiated Trade. The subparagraph k. exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction.

The exception proposed in subparagraph l. applies to a "stopped order." The stopped order exemption in Rule 611 of SEC Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution."[38] The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution."[39]

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of SEC Regulation NMS and as it is currently proposed for Trade-at, assume the NBB is $10.00 and another protected quote is at $9.95. Under Rule 611 of SEC Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the NBB. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Regulation NMS Rule 611 exception than under the proposed Trade-at exception, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception to ensure that the application of this exception will produce a consistent result under both Regulation NMS and the Plan. The Exchange therefore proposes to amend the stopped order exception to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the NBB, and for a stopped sell order, is equal to or greater than the NBO, as long as such order is priced at an acceptable increment.

Proposed subparagraph l. to Rule 11.21(a)(6)(D)(ii) would define a "stopped order" as an order that is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price, where (1) the stopped order was for the account of a customer; (2) the customer agreed to the specified price on an

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to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the proposed Trade-at exemption, unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan.

[37] *See* 17 CFR 242.611.

[38] *See* 17 CFR 242.611(b)(9).

[39] *See* Plan, Section VI(D)(12).

order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution as long as such order is priced at an acceptable increment.[40]

The subparagraph m. exception applies where the order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

The subparagraph n. exception applies to bona fide errors transactions. Following the adoption of Rule 611 and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 for certain error correction transactions.[41] The Exchange has determined that it is appropriate to incorporate the error correction exception to the Trade-at prohibition, as this exception is equally applicable in the Trade-at context. Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of SEC Regulation NMS.[42]

As with the corresponding exception under Rule 611 of SEC Regulation NMS, the Exchange proposes to define a "bona fide error" as: (i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order. The bona fide error must be evidenced by objective facts and circumstances, the Trading Center must maintain documentation of such facts and circumstances, and the Trading Center must record the transaction in its error account. To avail itself of the exemption, the Trading Center must establish, maintain, and enforce written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center must regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures.[43]

Consistent with the Plan, the final exception to the Trade-At Prohibition and its accompanying supplementary material applies to an order that is for a fractional share of a Pilot Security. The supplementary material provides that such fractional share orders may not be the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or that otherwise were effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan. In approving the Plan, the Commission noted that this exception was appropriate, as there could be potential difficulty in the routing and executing of fractional shares.[44]

The proposed rule change will become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[45] in general, and furthers the objectives of Section 6(b)(5) of the Act[46] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets, and clarifies the provisions of the Plan, and is designed to assist the Exchange and Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to Members, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the quoting and trading requirements of the Plan will apply equally to all Members that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the

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[40] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[41] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[42] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[43] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[44] *See* Approval Order, *supra* note 10, 80 FR at 27541.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

Act[47] and paragraph (f)(6) of Rule 19b–4 thereunder,[48] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGA–2016–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–08, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11403 Filed 5–13–16; 8:45 am]

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[47] 15 U.S.C. 78s(b)(3)(A).

[48] 17 CFR 240.19b–4.

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77796; File No. SR–ISE Mercury–2016–10]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction Involving Its Indirect Parent

May 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2016 ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is hereby filing with the U.S. Securities and Exchange Commission ("Commission") a proposed rule change (the "Proposed Rule Change") in connection with a proposed business transaction (the "Transaction") involving the Exchange's ultimate, indirect, non-U.S. upstream owners, Deutsche Börse AG ("Deutsche Börse") and Eurex Frankfurt AG ("Eurex Frankfurt"), and Nasdaq, Inc. ("Nasdaq"). Nasdaq is the parent company of The NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ PHLX LLC ("Phlx Exchange"), NASDAQ BX, Inc. ("BX Exchange"), Boston Stock Exchange Clearing Corporation ("BSECC") and Stock Clearing Corporation of Philadelphia ("SCCP").[3] Upon completion of the Transaction (the "Closing"), the Exchange's indirect parent company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), will become a direct subsidiary of Nasdaq. The Exchange will therefore become an indirect subsidiary of Nasdaq and, in addition to the Exchange's current affiliation with ISE Gemini, LLC ("ISE Gemini") and International Securities Exchange, LLC ("ISE"), an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. Nasdaq will become the ultimate parent of the Exchange.[4]

In order to effect the Transaction, the Exchange hereby seeks the Commission's approval of the following: (i) That certain corporate resolutions that were previously established by entities that will cease to be non-U.S. upstream owners of the Exchange after the Transaction will cease to be considered rules of the Exchange upon Closing; (ii) that certain governing documents of Nasdaq will be considered rules of the Exchange upon Closing; (iii) that the Third Amended and Restated Trust Agreement (the "Trust Agreement") that currently exists among International Securities Exchange Holdings, Inc. ("ISE Holdings"), U.S. Exchange Holdings, and the Trustees (as defined therein) with respect to the "ISE Trust" will cease to be considered rules of the Exchange upon Closing and, thereafter, that the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust; (iv) to amend and restate the Second Amended and Restated

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[4] The Exchange's current affiliates, ISE Gemini and ISE, have submitted nearly identical proposed rule changes. *See* SR–ISEGemini–2016–05 and SR–ISE–2016–11.

Certificate of Incorporation of ISE Holdings ("ISE Holdings COI") to eliminate provisions relating to the Trust Agreement and the ISE Trust and, in this respect, to reinstate certain text of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings; (v) to amend and restate the Second Amended and Restated Bylaws of ISE Holdings (the "ISE Holdings Bylaws") to waive certain voting and ownership restrictions in the ISE Holdings COI to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction; and (vi) to amend and restate the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings COI") to eliminate references therein to the Trust Agreement.

The Exchange requests that the Proposed Rule Change become operative at the Closing of the Transaction. The text of the proposed rule change is available at the Commission's Public Reference Room and on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of various changes to the organizational and governance documents of the Exchange's current owners and related actions that are necessary in connection with the Closing of the Transaction, as described below. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.[5] The Exchange would continue to be registered as a national securities exchange, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of NASDAQ Exchange, Phlx Exchange and BX Exchange as well as from its current affiliates, ISE Gemini and ISE. Neither the Exchange nor its current affiliates engage in clearing securities transactions, nor would they do so after the Transaction. Additionally, the Exchange would continue to be a separate self-regulatory organization ("SRO").

1. Current Ownership Structure of the Exchange

On December 17, 2007, ISE Holdings, the sole, direct parent of the Exchange, became a direct, wholly-owned subsidiary of U.S. Exchange Holdings.[6] U.S. Exchange Holdings is 85% directly owned by Eurex Frankfurt and 15% directly owned by Deutsche Börse. Eurex Frankfurt is a wholly-owned, direct subsidiary of Deutsche Börse.[7] Deutsche Börse therefore owns 100% of U.S. Exchange Holdings through its aggregate direct and indirect ownership.

2. The Transaction

On March 9, 2016, a Stock Purchase Agreement (the "Agreement") was entered into among Deutsche Börse, Eurex Frankfurt and Nasdaq. Pursuant to and subject to the terms of the Agreement, at the Closing, Deutsche Börse and Eurex Frankfurt will sell, transfer and deliver to Nasdaq, and Nasdaq will purchase, the capital stock of U.S. Exchange Holdings.

3. Post-Closing Ownership Structure of the Exchange

As a result of the Transaction, Nasdaq will directly own 100% of the equity interest of U.S. Exchange Holdings. U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will remain the sole, direct owner of the Exchange. The Exchange will therefore become an indirect subsidiary of Nasdaq and Nasdaq will become the ultimate parent of the Exchange. The Exchange will become an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. As a result of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be owners of the Exchange. The Exchange will therefore cease to have any Non-U.S. Upstream Owners. The Transaction will not have any effect on ISE Holdings' direct ownership of the Exchange. However, consummation of the Transaction is subject to approval of this Proposed Rule Change by the Commission, as described below.

4. Non-U.S. Upstream Owner Resolutions

Deutsche Börse and Eurex Frankfurt, as the Non-U.S. Upstream Owners of the Exchange, have previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange. Specifically, each of such Non-U.S. Upstream Owners has adopted resolutions ("Non-U.S. Upstream Owner Resolutions"), which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.[8] For example, the resolution of each of such Non-U.S. Upstream Owners provides that it shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange. In addition, the resolution of each of such Non-U.S. Upstream Owners provides that the board members, including each person who becomes a board member, would so consent to comply and cooperate and the particular Non-U.S. Upstream Owner would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate, to the extent that he or she is involved in the activities of the Exchange.

Section 19(b) of the Act,[9] and Rule 19b–4 thereunder,[10] require an SRO to file proposed rule changes with the Commission. Although the Non-U.S.

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[5] If the Exchange determines to make any such changes, it will seek the approval of the Commission only after the approval of this Proposed Rule Change to the extent required by the Securities Exchange Act of 1934, as amended ("Act"), the Commission's rules thereunder, or the Exchange's rules.

[6] *See* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR–ISE–2007–101).

[7] *See* Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (SR–ISE–2012–21). Each of Deutsche Börse and Eurex Frankfurt is referred to as a "Non-U.S. Upstream Owner" and collectively as the "Non-U.S. Upstream Owners."

[8] *See* Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10–221) (Order Approving ISE Mercury, LLC for Registration as a National Securities Exchange).

[9] 15 U.S.C. 78s(b).

[10] 17 CFR 240.19b–4.

Upstream Owners are not SROs, the Non-U.S. Upstream Owner Resolutions have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[11] As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange after the Transaction, the Exchange proposes that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[12]

5. Nasdaq Governing Documents

Nasdaq will become the ultimate parent of the Exchange upon the Closing of the Transaction. As described above, Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the Exchange's existing U.S. upstream owners are not SROs, their governing documents have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[13] The Exchange proposes that the Nasdaq Amended and Restated Certificate of Incorporation ("Nasdaq COI") and the Nasdaq Bylaws ("Nasdaq Bylaws, and together with the Nasdaq COI, the "Nasdaq governing documents") will become stated policies, practices, or interpretations of the Exchange as of the Closing and, therefore, will be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[14]

The Nasdaq Bylaws contain certain provisions regarding ownership, jurisdiction, books and records, and other issues, with respect to Nasdaq, as well as its board members, officers, employees, and agents (as applicable), relating to Nasdaq's control of any "Self-Regulatory Subsidiary" (*i.e.*, any subsidiary of Nasdaq that is an SRO as defined under Section 3(a)(26) of the Act).[15] The Exchange would be a "Self-Regulatory Subsidiary" of Nasdaq upon the Closing of the Transaction. The provisions in the Nasdaq Bylaws are comparable to the provisions of the Non-U.S. Upstream Owners Resolutions, including in the following manner:

- Giving due regard to the preservation of the independence of the self-regulatory function of each of Nasdaq's Self-Regulatory Subsidiaries.[16]
- Maintaining the confidentiality of all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that comes into Nasdaq's possession, which shall not be used for any non-regulatory purposes; making such books and records available for inspection and copying by the Commission; and maintaining such books and records relating to each Self-Regulatory Subsidiary in the United States.[17]
- To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of Nasdaq shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[18]
- Compliance by Nasdaq with the U.S. federal securities laws and the rules and regulations thereunder, cooperation by Nasdaq with the Commission and Nasdaq's Self-Regulatory Subsidiaries, and reasonable steps by Nasdaq necessary to cause its agents to cooperate with the Commission and, where applicable, the Self-Regulatory Subsidiaries pursuant to their regulatory authority.[19]
- Consent by Nasdaq and its officers, Directors, and employees to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary.[20]
- Reasonable steps by Nasdaq necessary to cause its current and future officers, Directors, and employees, to consent in writing to the applicability to them of certain provisions of the Nasdaq Bylaws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary.[21]
- Approval by the Commission under Section 19 of the Act prior to any resolution of the Nasdaq Board to approve an exemption for any person from the ownership limitations of the Nasdaq COI.[22]
- Filing with, or filing with and approval by, the Commission (as the case may be) under Section 19 of the Act prior to amending the Nasdaq COI or the Nasdaq Bylaws.[23]

The Exchange believes that the provisions in the Nasdaq Bylaws should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.[24]

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[11] *See* File No. 10–221, *supra* note 8.

[12] The "Form of German Parent Corporate Resolutions" is attached hereto as Exhibit 5A. As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of Deutsche Börse and Eurex Frankfurt also would cease accordingly. Resolution 11 provides that, notwithstanding any provision of the resolutions, before: (a) Any amendment to or repeal of any provision of this or any of the resolutions; or (b) any action that would have the effect of amending or repealing any provision of the resolutions shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. In addition, Deutsche Börse, Eurex Frankfurt, U.S. Exchange Holdings, ISE Holdings, and ISE previously became parties to an agreement to provide for adequate funding for the Exchange's regulatory responsibilities. The Exchange subsequently became a party to the agreement along with ISE Gemini. This agreement will be terminated upon the Closing of the Transaction.

[13] *See* File No. 10–221, *supra* note 8.

[14] The Nasdaq COI dated January 24, 2014 is attached hereto as Exhibit 5B along with subsequent amendments thereto dated November 17, 2014 and September 8, 2015 and the Certificate of Elimination of the Series A Convertible Preferred Stock dated January 27, 2014. The Nasdaq Bylaws are attached hereto as Exhibit 5C.

[15] 15 U.S.C. 78c(a)(26).

[16] Nasdaq Bylaws Section 12.1(a) (Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries).

[17] Nasdaq Bylaws Section 12.1(b).

[18] Nasdaq Bylaws Section 12.1(c).

[19] Nasdaq Bylaws Section 12.2(a) (Cooperation with the Commission). The officers, Directors, and employees of Nasdaq, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and the self-regulatory functions and responsibilities of the Self-Regulatory Subsidiaries. Nasdaq Bylaws Section 12.2(b).

[20] Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

[21] Nasdaq Bylaws Section 12.4 (Further Assurances).

[22] Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

[23] Nasdaq Bylaws Section 12.6 (Amendments to the Certificate of Incorporation); Nasdaq Bylaws Section 11.3 (Review by Self-Regulatory Subsidiaries).

[24] The U.S. Exchange Holdings COI also includes similar provisions, including that U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the "Ownership Limit" and the "Voting Limit." *See* U.S. Exchange Holdings COI, Articles TENTH through SIXTEENTH. The U.S. Exchange Holdings

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Additionally, and similar to the ISE Holdings COI, the Nasdaq COI imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes of Nasdaq in excess of 5% of the securities generally entitled to vote may vote the shares in excess of 5%.[25] This limitation would mitigate the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchange, and it facilitates the Exchange's and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board may approve exemptions from the 5% voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,[26] provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its SRO subsidiary.[27] Further, any such exemption from the 5% voting limitation would not be effective until approved by the Commission pursuant to Section 19 of the Act.[28]

6. Trust Agreement [29]

The ISE Holdings COI currently contains certain ownership limits ("Ownership Limits") and voting limits ("Voting Limits") with respect to the outstanding capital stock of ISE Holdings.[30] The Trust Agreement was entered into in 2007 to provide for an automatic transfer of ISE Holdings shares to a trust (the "ISE Trust") if a Person [31] were to obtain an ownership or voting interest in ISE Holdings in excess of these Ownership Limits and Voting Limits, through ownership of one of the Non-U.S. Upstream Owners, without obtaining the approval of the Commission. In this regard, the Trust Agreement serves four general purposes: (i) To accept, hold and dispose of Trust Shares [32] on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event [33] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option; [34] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary [35] as provided in Section 4.2(h) therein. The ISE Trust, and corresponding Trust Agreement, is the mechanism by which the Ownership Limits and Voting Limits in the ISE Holdings COI currently would be protected in the event that a Non-US Upstream Owner purportedly transfers any related ownership or voting rights other than in accordance with the ISE Holdings COI.

As described above, Section 19(b) of the Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, the Trust Agreement has previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore is considered rules of the Exchange.[36] The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (*e.g.*, U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange proposes that the Trust Agreement will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[37] The Exchange also proposes that, as of the Closing of the Transaction, the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

7. ISE Holdings COI

The ISE Holdings COI was amended in 2007 in relation to the ownership of ISE by Deutsche Börse.[38] At that time, provisions were added to the ISE

COI provides that U.S. Exchange Holdings will notify the Exchange's Board if any "Person," either alone or together with its "Related Persons," at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares of U.S. Exchange Holdings. *See* SR–ISE–2007–101, *supra* note 6, at 71981.

[25] *See* Article FOURTH, Section C of the Nasdaq COI.

[26] 15 U.S.C. 78c(a)(39).

[27] *See* Article FOURTH, Section C.6. of the Nasdaq COI. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to an facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

[28] *See* Section 12.5 of the Nasdaq Bylaws.

[29] The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein). By its terms, the Trust Agreement originally related solely to ISE Holdings' ownership of ISE, and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. In 2010, the Commission approved proposed rule changes that revised the Trust Agreement to replace references to ISE with references to any Controlled National Securities Exchange. *See* Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) and 61498 (February 4, 2010), 75 FR 7299 (February 18, 2010) (SR–ISE–2009–90); see also ISE Trust Agreement, Articles I and II, Sections 1.1 and 2.6. Thus, the ISE Trust Agreement also applies to ISE Gemini and ISE Mercury.

[30] *See* Article FOURTH, Section III of the ISE Holdings COI.

[31] *See* SR–ISE–2007–101, *supra* note 6. Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

[32] Under the Trust Agreement, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be. The term "Excess Shares" means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the ISE Holdings COI, through, for example, ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term "Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[33] Under the Trust Agreement, the term "Material Compliance Event" means, with respect to a Non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions (*i.e.*, as referenced in note 7) in any material respect.

[34] Under the Trust Agreement, the term "Call Option" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[35] Under the Trust Agreement, the term "Trust Beneficiary" means U.S. Exchange Holdings.

[36] *See* File No. 10–221, *supra* note 8.

[37] The current Trust Agreement is attached hereto as Exhibit 5D. Section 8.2 of the Trust Agreement provides, in part, that, for so long as ISE Holdings controls, directly or indirectly, the Exchange, before any amendment or repeal of any provision of the Trust Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of the Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. The Exchange notes that, according to the terms of the Trust Agreement, Sections 6.1 and 6.2 thereof, which relate to limits on disclosure of confidential information and certain permitted disclosure, will survive the termination of the Trust Agreement for a period of ten years.

[38] *See* SR–ISE–2007–101, *supra* note 6.

Holdings COI relating to the ISE Trust to provide for an automatic transfer of ISE Holdings' shares to the ISE Trust if a Person were to obtain an ownership or voting interest in ISE Holdings in excess of Voting Limits and Ownership Limits, without obtaining the approval of the Commission.

As described above, the Exchange is proposing that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction. Accordingly, the Exchange proposes to remove provisions relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.[39] The Exchange proposes to reinstate certain provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.[40]

The changes to the ISE Holdings COI proposed herein would describe the corrective treatment of "Excess Shares" (*i.e.,* any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits). The proposed changes would apply corrective procedures if any Person, alone or together with its Related Persons, purports to sell, transfer, assign or pledge any shares of ISE Holdings stock in in violation of the Ownership Limits. Specifically, any such sale, transfer, assignment or pledge would be void, and that number of shares in excess of the Ownership Limits would be deemed to have been transferred to ISE Holdings, as "Special Trustee" of a "Charitable Trust" for the exclusive benefit of a "Charitable Beneficiary" to be determined by ISE Holdings.[41] These corrective procedures also would apply if there is any other event causing any holder of ISE Holdings stock to exceed the Ownership Limits, such as a repurchase of shares by ISE Holdings. The automatic transfer would be deemed to be effective as of the close of business on the business day prior to the date of the violative transfer or other event. The Special Trustee of the Charitable Trust would be required to sell the Excess Shares to a person whose ownership of shares is not expected to violate the Ownership Limits, subject to the right of ISE Holdings to repurchase those shares. The proposed changes to the ISE Holdings COI are as follows:[42]

- The Exchange proposes to delete the current provisions in Article Fourth, Sections III(a)(ii), III(a)(iii) and III(b)(i) of the ISE Holdings COI that provide that the ISE Holdings Board of Directors shall deliver to the ISE Trust copies of certain written notice and updates thereto currently required under Sections III(a)(ii) and III(a)(iii) of Article FOURTH (*i.e.,* if any Person at any time owns, of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then outstanding Voting Shares).
- The Exchange proposes to adopt new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, which would provide that, notwithstanding any other provisions contained in the ISE Holdings COI, to the fullest extent permitted by applicable law, any shares of capital stock of ISE Holdings (whether such shares are common stock or preferred stock) not entitled to be voted due to the restrictions set forth in Section III(b)(i) of Article FOURTH of the ISE Holdings COI (and not waived by the ISE Holdings Board of Directors and approved by the Commission pursuant to Section III(b)(i) of Article FOURTH of the ISE Holdings COI), shall not be deemed to be outstanding for purposes of determining a quorum or a minimum vote required for the transaction of any business at any meeting of stockholders of ISE Holdings, including, without limitation, when specified business is to be voted on by a class or a series voting as a class.
- As a result of the addition of new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, the Exchange proposes to renumber current Article FOURTH, Section III(b)(iii) as resulting Article FOURTH, Section III(b)(iv).
- The Exchange proposes several changes to Article FOURTH, Section III(c) of the ISE Holdings COI, which relates to violations of any Ownership Limits or Voting Limits and the treatment of Excess Shares, including the following:
- Addition of new text relating to the designation as "Excess Shares" for any shares held in excess of the relevant Ownership Limits; such designation and treatment being effective as of the close of business on the business day prior to the date of the purported transfer or other event leading to such Excess Shares.[43]
- Deletion of current text requiring notification to the ISE Trust upon the occurrence of certain events and the transfer of Voting Shares to the ISE Trust.[44]
- Addition of new text describing the treatment of "Excess Shares" upon any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits. Specifically, the Exchange proposes within new Article FOURTH, Section III(c)(i) of the ISE Holdings COI that any such purported event shall be void ab initio as to such Excess Shares, and the intended transferee shall acquire no rights in such Excess Shares. Such Excess Shares shall be deemed to have been transferred to ISE Holdings (or to an entity appointed by ISE Holdings that is unaffiliated with ISE Holdings

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[39] The proposed, amended ISE Holdings COI is attached hereto as Exhibit 5E. Capitalized terms used to describe the ISE Holdings COI that are not otherwise defined herein shall have the meanings prescribed in the ISE Holdings COI. Article FOURTEENTH of the ISE Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the ISE Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[40] *See, e.g.,* Exhibit 5A to SR–ISE–2007–101, *supra* note 6. *See also* Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR–ISE–2004–29), through which ISE, which was organized as a corporation at that time (*i.e.,* "ISE, Inc."), amended its Certificate of Incorporation and Constitution at that time in connection with ISE's then-contemplated initial public offering. ISE subsequently reorganized into a holding company structure, whereby it became a limited liability company, as it is so organized currently, and whereby ISE Holdings became the sole owner of ISE. *See* Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR–ISE–2006–04). As a result, and at the time of the reorganization, ISE eliminated the "ISE, Inc." Certificate of Incorporation and Constitution. The ISE Holdings COI and ISE Holdings Bylaws were introduced at that time and included substantially the same ownership and voting limitations that had been contained in the ISE, Inc. Certificate of Incorporation and Constitution.

[41] ISE Holdings may also determine to appoint as "Special Trustee" any entity that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings. Currently, the ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains ownership or voting interest in ISE Holdings in excess of the Ownership Limits or Voting Limits or in the event of a Material Compliance Event. *See* SR–ISE–2007–101, *supra* note 6, for a discussion of the ISE Trust, including the operation thereof.

[42] The Exchange is not proposing any changes to the actual Ownership Limits or Voting Limits specified in the current ISE Holdings COI. *See* Article FOURTH, Sections III(a) and III(b) of the ISE Holdings COI. The Exchange proposes to delete certain defined terms from the ISE Holdings COI, such as "ISE Trust," "Trust Beneficiary" and "Trustee," and replace them with new defined terms within the ISE Holdings COI, such as "Charitable Trust," "Charitable Beneficiary" and "Special Trustee." The Exchange also proposes to renumber certain sections of the ISE Holdings COI to account for proposed new and deleted sections therein.

[43] *See* resulting Article FOURTH, Section III(c).

[44] *Id.*

and any Person or its Related Persons owning such Excess Shares), as Special Trustee of the Charitable Trust for the exclusive benefit of the Charitable Beneficiary or Beneficiaries.[45]

- Addition of new text describing the treatment of dividends or other distributions paid with respect to Excess Shares.[46]
- Addition of new text describing the handling of any distribution of assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of ISE Holdings.[47]
- Addition of new text describing the authority of the Special Trustee with respect to rescinding as void any votes cast by a purported transferee or holder of Excess Shares as well as recasting of votes in accordance with the desires of the Special Trustee acting for the benefit of ISE Holdings.[48]
- Addition of new text describing the sale by the Special Trustee, to a Person or Persons designated by the Special Trustee whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, of Excess Shares transferred to the Charitable Trust, within 20 days of receiving notice from ISE Holdings that Excess Shares have been so transferred.[49] Existing text would be deleted that requires the Trustees of the ISE Trust to use their commercially reasonable efforts to sell the Excess Shares upon receipt of written instructions from the ISE Trust Beneficiary. New text also would be added describing the handling of any proceeds of such a sale.
- Addition of new text describing that Excess Shares shall be deemed to have been offered for sale to ISE Holdings on the date of the transaction or event resulting in such Excess Shares.[50]
- Deletion of current Article FOURTH, Section III(c)(v), which currently relates to the ISE Trust Beneficiary's right to reacquire Excess Shares from the ISE Trust under certain circumstances.

The Exchange is not proposing to reinstate all of the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings, as certain of such text would continue to not be applicable, even after the Transaction, given the Exchange's resulting ownership. For example, prior to Deutsche Börse's ownership of ISE Holdings, the ISE Holdings COI contained certain provisions that dealt with the publicly-traded nature of ISE Holdings' stock. This text was removed from the ISE Holdings COI upon Deutsche Börse's ownership of ISE Holdings, as ISE Holdings' stock ceased to be publicly-traded.[51] Therefore, the Exchange is not proposing to reinstate the following provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings relating to:

- Regulation 14A under the Act (pertaining to solicitations of proxies).
- the treatment of transactions of ISE Holdings stock on or through the facilities of any national securities exchange or national securities association.
- inspection of the ISE Holdings accounts and records by ISE Holdings stockholders.
- stockholder voting to amend, repeal or adopt provisions of the ISE Holdings COI or the ISE Holdings Bylaws.
- stockholder action called at annual or special meetings of stockholders.
- nominations for directors and the election thereof.

The Exchange also is not proposing to reinstate the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings that related to changes in terminology used throughout the ISE Holdings COI.[52] Additionally, provisions of the ISE Holdings COI that authorize shares of capital stock of ISE Holdings have been amended since Deutsche Börse acquired ownership of ISE Holdings.[53] The Exchange does not propose to amend the text of the ISE Holdings COI relating to share authorization. The Exchange also does not propose to reinstate the location or specific wording of text of the ISE Holdings COI that was adjusted or relocated upon Deutsche Börse's ownership of ISE Holdings, but that otherwise has the same practical effect and meaning as it did prior to Deutsche Börse's ownership of ISE Holdings.

7. U.S. Exchange Holdings COI

The Exchange proposes to remove the reference to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI. As proposed herein, the Trust Agreement will cease to be considered rules of the Exchange as of the Closing of the Transaction and would be repealed in connection with the Transaction. The Exchange also proposes to retitle the document as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings and update the effective date thereof.[54]

8. ISE Holdings Bylaws

The ISE Holdings COI Voting Limits restrict any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings. The ISE Holdings COI Ownership Limits restrict any person, either alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[55]

The ISE Holdings COI and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if the board makes the following three findings: (1) The waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an exchange under the Act and the rules thereunder; (2) the waiver is otherwise in the best interests of ISE Holdings, its stockholders, and the Exchange; and (3) the waiver will not impair the ability of the Commission to enforce the Act. However, the board of directors may not waive these voting and ownership restrictions as they apply to Exchange members. In addition, the board of directors may not waive these voting and ownership restrictions if such waiver would result in a person subject to a "statutory disqualification" owning or voting shares above the stated thresholds. Any waiver of these voting and ownership restrictions must be by way of an amendment to the Bylaws approved by the board of directors, which amendment must be approved by the Commission.[56]

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[45] *See* proposed Article FOURTH, Section III(c)(ii). The "Charitable Beneficiary" would be one or more organizations described in Sections 170(b)(1)(A) or 170(c) of the Internal Revenue Code of 1986, as amended from time to time. The "Charitable Trust" would be the trust established for the benefit of the Charitable Beneficiary for which ISE Holdings is the trustee. The "Special Trustee" would be ISE Holdings, in its capacity as trustee for the Charitable Trust, any entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings.

[46] *See* proposed Article FOURTH, Section III(c)(iii).

[47] *See* proposed Article FOURTH, Section III(c)(iv).

[48] *See* proposed Article FOURTH, Section III(c)(v).

[49] *See* proposed Article FOURTH, Section III(c)(vi).

[50] *See* proposed Article FOURTH, Section III(c)(vii).

[51] *See* Exhibit 5A to SR–ISE–2007–101, *supra* note 6.

[52] For example, the ISE Holdings COI currently refers to Delaware General Corporation Law as "DGCL." The Exchange would not reinstate the prior "GCL" term that was used in the ISE Holdings COI.

[53] *See, e.g.,* Securities Exchange Act Release No 73860 (December 17, 2014), 79 FR 77066 (December 23, 2014) (SR–ISE–2014–44).

[54] The proposed, amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5F. Article SIXTEENTH of the U.S. Exchange Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the U.S. Exchange Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The Exchange also proposes to amend the U.S. Exchange Holdings COI to consistently refer to such document as the "Restated Certificate," which is a defined term therein.

[55] *See* ISE Holdings COI, Article FOURTH, Section III.

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.[57] In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the Proposed Rule Change to the Commission. In so waiving the applicable voting and ownership restrictions, the board of directors of ISE Holdings has determined, with respect to Nasdaq, that: (i) Such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Act and the rules promulgated thereunder; [58] (ii) such waiver is otherwise in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange, or facility thereof; [59] (iii) such waiver will not impair the ability of the Commission to enforce the Act; [60] (iv) neither Nasdaq nor any of its Related Persons (as that term is defined in the ISE Holdings COI) are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); and (v) neither Nasdaq nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Act) of such Controlled National Securities Exchange.

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. In addition, the Transaction will not impair the ability of the Exchange's, or any facility thereof, to carry out their respective functions and responsibilities under the Act and will not impair the ability of the Commission to enforce the Act. The Exchange therefore seeks approval of the waiver described herein with respect to the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.

Summary

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Transaction will not impair the ability of ISE Holdings, the Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Act with respect to the Exchange. As such, the Commission's plenary regulatory authority over the Exchange will not be affected by the approval of this Proposed Rule Change. The Exchange is requesting approval by the Commission of changes proposed herein in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b)of the Act,[61] in general, and furthers the objectives of Section 6(b)(1) of the Act,[62] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

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[56] *See* ISE Holdings COI, Article FOURTH, Sections III(a)(i) and III(b)(i). Such amendment to Holdings Bylaws must be filed with and approved by the Commission under Section 19(b) of the Act and become effective thereunder. In this regard, Section 10.1 of the Bylaws provides that the Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors of ISE Holdings or meeting of the stockholders. With respect to each national securities exchange controlled, directly or indirectly, by ISE Holdings (the "Controlled National Securities Exchanges"), or facility thereof, before any amendment to or repeal of any provision of the Bylaws of ISE Holdings shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[57] The proposed, amended ISE Holdings Bylaws are attached hereto as Exhibit 5G. The proposed amendment to the ISE Holdings Bylaws would also clarify that Eurex Global Derivatives AG or "EGD," which is referenced in Section 11.2 of the ISE Holdings Bylaws, ceased to be an Upstream Owner of the Exchange as a result of a prior transaction that did not require an amendment to the ISE Holdings Bylaws. *See* Securities Exchange Act Release No. 73530 (November 5, 2014), 79 FR 77066 (December 17, 2014) (SR–ISE–2014–44).

[58] The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.

[59] For example, the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services.

[60] The Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Commission will continue to have appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

[61] 15 U.S.C. 78s(b).

[62] 15 U.S.C. 78s(b)(1).

The Exchange also believes that this Proposed Rule Change furthers the objectives of Section 6(b)(5)[63] of the Act because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the Proposed Rule Change will continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors.

Approval of this Proposed Rule Change will enable ISE Holdings to continue its operations and the Exchange to continue its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Exchange expects that the Transaction will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Transaction will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Transaction will contribute to streamlined and efficient operations, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

Furthermore, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

The Exchange believes it is consistent with the Act to allow Nasdaq to become the ultimate parent of the Exchange. Neither Nasdaq nor any of its related persons is subject to any statutory disqualification or is a Member of the Exchange. Moreover, the Nasdaq governing documents include certain provisions designed to maintain the independence of the Exchange's self-regulatory functions. Accordingly, the Exchange believes that Nasdaq's acquisition of ultimate ownership and exercise of voting control of the Exchange will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

Although Nasdaq will not carry out regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. Nasdaq's governing documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[64] and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. For example, the Nasdaq governing documents provide that Nasdaq will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Exchange. Also, each board member, officer, and employee of Nasdaq, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the Exchange. In discharging his or her responsibilities as a board member of Nasdaq, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that Nasdaq's actions would have on the ability of the Exchange to carry out its responsibilities under the Act. In addition, Nasdaq, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange.

Further, Nasdaq (along with its respective board members, officers, and employees) and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the Exchange and not use such information for any non-regulatory purposes.

In addition, Nasdaq's books and records relating to the activities of the Exchange will at all times be made available for, and books and records of U.S. Exchange Holdings will be subject at all times to, inspection and copying by the Commission and the Exchange. Books and records of U.S. Exchange Holdings related to the activities of the Exchange also will continue to be maintained within the U.S. Moreover, for so long as Nasdaq directly or indirectly controls the Exchange, the books, records, officers, directors (or equivalent), and employees of Nasdaq shall be deemed to be the books, records, officers, directors, and employees of the Exchange.

To the extent involved in the activities of the Exchange, Nasdaq, its board members, officers, and employees irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange. Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the U.S., to the extent such directors, officers, or employees are involved in the activities of the Exchange, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange.

The Nasdaq governing documents, the U.S. Exchange Holdings COI, and the

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[63] 15 U.S.C. 78f(b)(5).

[64] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

U.S. Exchange Holdings Bylaws require that any change thereto must be submitted to the Exchange's Board. If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission. This requirement to submit changes to the Exchange's Board continues for so long as Nasdaq or U.S. Exchange Holdings, as applicable, directly or indirectly, control the Exchange.

As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange upon the Closing of the Transaction, the Exchange believes that its proposal that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (*e.g.*, U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange believes that its proposal that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

Given the Exchange's proposal to repeal the Trust Agreement and dissolve the ISE Trust, the Exchange believes that the proposed changes to the ISE Holdings COI are consistent with the Act. The proposed changes would delete provisions of the ISE Holdings COI that will no longer be relevant and would reinstate certain provisions of the ISE Holdings COI that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[65] the Exchange believes that the Proposed Rule Change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members.

The Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.[66] In this regard, the Exchange notes that the Exchange, and its affiliates ISE Gemini and ISE, function only as options trading markets—they do not function as equity trading markets or as clearing agencies, as do certain of Nasdaq's existing subsidiaries.

The Exchange believes that there is considerable support for a finding that the Transaction is consistent with the Act with respect to competition. 14 exchanges currently compete for options trading business. Exchanges compete on technology, market model, trading venue, fees and fee structure. Additionally, low switching costs allow customers to easily move to another exchange, which customers do regularly, as reflected in constantly varying market shares among the existing exchange operators. In addition, the Commission has approved several, new registered options exchanges in recent history, which highlights an increase in competition in the market for listed options trading.[67]

The Exchange believes that the Transaction will not change the competitive landscape for listed options trading and the changes proposed herein are consistent with other recent Commission approvals. For example, a similar proposed combination of Deutsche Börse and NYSE Euronext in 2011 received Commission approval and would have resulted in a combined greater than 40% market share of listed options volume among its three, respective options exchanges (based on 2010 data).[68] Similarly, as a result of the Transaction, the options exchanges owned by Nasdaq would account for approximately 41% aggregate market share of listed options volume.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such Proposed Rule Change; or

(B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[65] 15 U.S.C. 78f(b)(8).

[66] *See, e.g.*, Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR–CBOE–2011–107 and SR–NSX–2011–14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR–NYSE–2005–77); Securities Exchange Act Release No. 71449 (Jan. 30, 2014), 79 FR 6961 (Feb. 05, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43); Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex-2011–78; SR–NYSEArca-2011–72).

[67] *See, e.g.*, Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order approving application for exchange registration of ISE Mercury, LLC); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (Order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (Order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (Order approving rules governing the trading of options on the BATS Options Exchange).

[68] *See* Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex-2011–78; SR–NYSEArca-2011–72).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISEMercury-2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEMercury-2016–10. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEMercury-2016–10, and should be submitted on or before June 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11407 Filed 5–13–16; 8:45 am]

BILLING CODE 8011–01–P

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[69] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before June 15, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: The Emerging Leaders Initiative aims to assist established small businesses located in historically challenged communities with increasing their sustainability, attracting outside investment, and strengthening each community's economic base by creating jobs and providing valuable goods and services. These objectives are pursued by offering eligible business executives a 7-month intensive course focused on the skills essential to develop their companies, expand their resource networks, and increase their confidence and motivation. The course is designed to be hands-on and is composed of classroom sessions, out-of-class preparation work, and executive mentoring groups where participants can discuss their challenges. A broad range of topics is covered in the curriculum, including financial measures of business health, strategies for marketing, access to funding, and employee management and recruitment.

SBA plans to conduct annual performance-monitoring activities to assess the short- and intermediate-term outcomes of participants in the Emerging Leaders Initiative. The broad outcomes assessed will include satisfaction, changes in management behavior, and changes in economic outcomes, such as loans obtained and jobs created. Specifically, SBA plans to implement three instruments with the participants in each cohort: An intake assessment form at the start of the program to document baseline conditions, a satisfaction-oriented feedback form at the end of the program, and an annual outcome-oriented survey for 3 years after program completion. The latter instrument will document changes in key outcomes over a longer period, because job growth, revenue growth, profitability, and other economic outcomes of program participation are expected to manifest in the intermediate and long terms.

Solicitation of Public Comments

Title: Emerging Leaders Initiatives.

Description of Respondents: Small Businesses located in historically challenged communities.

Form Number: N/A.

Estimated Annual Responses: 3,474.

Estimated Annual Hour Burden: 1,340.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–11504 Filed 5–13–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9559]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on Friday, June 3, 2016, from 11:00 a.m. until 12:00 p.m. Eastern Daylight Time. The purpose of the teleconference meeting is to consider the recommendations of the Commission's National Committee for the Intergovernmental Oceanographic Commission (IOC). The call will also be an opportunity to provide an update on recent and upcoming Commission and UNESCO activities. The Commission will accept brief oral comments during a portion of this conference call. The public comment period will be limited to approximately 10 minutes in total, with two minutes allowed per speaker. For more information, or to arrange to participate in the conference call, individuals must make arrangements with the Executive Director of the National Commission by May 31, 2016.

The National Commission may be contacted via email at *DCUNESCO@state.gov* or Telephone (202) 663–2685; Fax (202) 663–3194. The Web site can be accessed at: *http://www.state.gov/p/io/unesco/*.

Dated: May 6, 2016.

Allison Wright,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2016–11512 Filed 5–13–16; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice: 9561]

Culturally Significant Objects Imported for Exhibition Determinations: "Keir Collection of Art of the Islamic World" Exhibitions

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that objects to be included in multiple exhibitions of the Keir Collection of Art of the Islamic World, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Dallas Museum of Art, Dallas, Texas, and at possible additional exhibitions or venues yet to be determined, from on about December 17, 2016, until on or about May 16, 2021, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the objects covered under this notice, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 10, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–11510 Filed 5–13–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting: RTCA Special Committee 233 Addressing Human Factors/Pilot Interface Issues for Avionics (SC–233)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Sixth RTCA Special Committee 233 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Sixth RTCA Special Committee 233 meeting.

DATES: The meeting will be held June 21–23, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at FedEx World Headquarters Conference Center, 3670 Hacks Cross Road, Building G (3rd Floor), Memphis, TN 38125–8800. Tel: (202) 330–0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Karan Hofmann, Program Director, RTCA, Inc., *khofmann@rtca.org,* (202) 330–0680 or Marc Mannella, FedEx, *marc.mannella@fedex.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 233. The agenda will include the following:

Tuesday, June 21, 2016

1. Introduction, Upcoming PMC Dates and Deliverable
2. Review of RTCA Consensus Process
3. Review of TOR
4. Review Notice 8110.98
5. Current status of the document
   a. WG2 update
   b. WG3 update
6. Leadership guidance to subcommittees

Wednesday, June 22, 2016

1. Working Groups Break Out Sessions
2. End of the Day Working Group Status Report Outs

Thursday, June 23, 2016

1. Working Groups Break Out Session
2. Leadership Team Wrap-up
3. Discussion on Document Structure and Next Steps, Review Process
4. Working Groups Assignment Status
   a. Subcommittee leader reports
   b. Follow-on actions identified for each work group
5. Meeting Recap, Action Items, Key Dates

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time. Please RSVP with Marc Mannella if interested in participating in the FedEx Hub Tour held at 10:30 p.m.

Issued in Washington, DC, on May 10, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–11501 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 231 (SC–231) Terrain Awareness Warning Systems (TAWS)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Tenth RTCA Special Committee 231 Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Tenth RTCA Special Committee 231 meeting.

DATES: The meeting will be held June 7–10, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Jennifer Iversen, Program Director, RTCA, Inc., *jiversen@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 231. The agenda will include the following:

Tuesday, June 7, 2016 (9:00 a.m.–5:00 p.m.)

1. Welcome/Introduction
2. Administrative Remarks
3. Agenda Review
4. Summary of Working Group activities
5. Other Business
6. Date and Place of Next Meeting

Wednesday, June 8, 2016 (9:00 a.m.–5:00 p.m.)

1. Continuation of Plenary or Working Group Session

Thursday, June 9, 2016 (9:00 a.m.–5:00 p.m.)

1. Continuation of Plenary or Working Group Session

Friday, June 10, 2016 (9:00 a.m.–1:00 p.m.)

1. Continuation of Plenary or Working Group Session

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 10, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–11498 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Third Meeting: RTCA Special Committee 222 (SC–222) AMS(R)S, Joint Meeting With EUROCAE WG–82

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Twenty-Third RTCA Special Committee 222 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Twenty-Third RTCA Special Committee 222 meeting.

DATES: The meeting will be held June 8–9, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at Noordwijk, Netherlands (ESA).

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Jennifer Iversen, Program Director, RTCA, Inc., *jiversen@rtca.org,* (202) 330–0662 or Armin Schlereth, Chair, EUROCAE WG–82, *armin.schlereth@dfs.de.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 222. The agenda will include the following:

Wednesday, June 8, 2016 (10:00 a.m. local and 4:00 a.m. EDT)

1. Morning Session
   a. Welcome & Introduction
   b. Approval of the agenda
   c. IPR and EUROCAE membership
   d. Minutes of last meeting
   e. Coordination with other GROUPs
   i. (EUROCAE, RTCA, ICAO, SESAR, AEEC)
   f. Presentation of general interest
   i. SESAR P15.2.5 flight trials report (AIRBUS)
   ii. IRIS Precursor (INMARSAT)
   iii. IRIS Service Evolution Project (INMARSAT)
   g. SATCOM MASPS development (INMARSAT)
2. Afternoon Session (2:00 p.m.–6:00 p.m. and, 8:00 a.m.–12:00 p.m. EDT)
   a. Joint session with RTCA SC–222
   b. Present and discuss actual status of MASPS (INMARSAT)(3 hours duration)
   c. Discuss actual IRIDIUM status
   d. Next steps

Thursday, June 9, 2016 (Ends 6:00 p.m. local and 12:00 p.m. EDT)

1. Morning Session
   a. ESA Lab Tour (ESA) (2 hours duration)
   b. SATCOM MOPS development (HONEYWELL) (1.5 hours duration)
2. Afternoon Session
   a. Joint session with RTCA SC–222
   i. Present and discuss actual status of MOPS
   1. INMARSAT (3 hours duration)
   ii. Next steps
   b. AOB
   c. Summary & Next Meeting

This is a joint meeting with EUROCAE WG–82. The physical meeting is in Noordwijk, Netherlands (ESA). Dress is business casual. For details please contact Armin Schlereth, Chair of Eurocae WG–82 *armin.schlereth@dfs.de.* This meeting is to progress work on MASPS and MOPS for SBB use in en route continental airspace. Updates on Iridium progress may be received. Minor changes may be made to the agenda. Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 11, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–11497 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Boise Air Terminal (Gowen Field) Boise, ID; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Noise Exposure Maps, Correction.

SUMMARY: This action corrects the noise exposure map notice and receipt of noise compatibility program and request for review published on May 10, 2016. In that document, the FAA has determinied that the noise exposure maps submitted by the City of Boise, ID, for the Boise Air Terminal (Gowen Field), Boise, ID, are in compliance with applicable requirements, and that it is reviewing a proposed noise compatibility program that was submitted for Boise Air Terminal (Gowen Field) under part 150 in conjunction with the Noise Exposure Map, and that this program be approved or disapproved on or before October 29, 2016. This document corrects an error in the **SUPPLEMENTARY INFORMATION** showing Great Falls International Airport instead of Boise Air Terminal (Gowen Field).

DATES: The comment period ends July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Scott Eaton, Community Planner, HLN–612, Federal Aviation Administration, Helena Airports District Office, FAA Building, Ste 2, 2725 Skyway Drive, Helena, MT 59502, telephone (406) 449–5291, facsimile, (406) 449–5274.

SUPPLEMENTARY INFORMATION: On May 10, 2016, the FAA published a notice titled "Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review" (81 FR 28933). In that Notice, the FAA announces its compliance with noise exposure maps submitted for Boise Air Terminal (Gowen Field), Boise, ID, and also announces that it is reviewing a proposed noise compatibility program submitted in conjunction with the noise exposure map.

In the **Federal Register** of May 10, 1016, FR Doc. 2016–10981, make the following correction:

On page 28933, column 2, line 22, remove Great Falls International Airport and add in its place Boise Air Terminal (Gowen Field).

Issued in Washington, DC, on May 10, 2016.

Elliott Black,

Director, Office of Airport Planning and Programming.

[FR Doc. 2016–11503 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; American Pyrotechnics Ass'n. (APA) Application for Exemption From the 14-Hour Rule; Extension of Current APA Exemption Period; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for and extension of exemption; request for comments; correction.

SUMMARY: The FMCSA published a document in the **Federal Register** of May 9, 2016, concerning a request for comments on the American Pyrotechnics Association (APA) requested additions to and deletions from the list of motor carriers previously granted exemptions for the 2015 and 2016 Independence Day fireworks shows. The document published a date of June 8, 2016, but did not require comments to be submitted by June 8.

DATES: Comments must be received on or before June 8, 2016.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Correction

1. In the **Federal Register** of May 9, 2016, in FR Doc. 2016–10820, on page 28115, in the third column, correct the **DATES** paragraph to read:

DATES: Comments must be received on or before June 8, 2016.

Issued on: May 10, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–11456 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Department of Transportation (DOT), Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice of funding availability for the Mid-South Atlantic Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for, business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, or chambers of commerce, registered with the Internal Revenue Service as 501C(6) or 501C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Mid-South Atlantic Region (Georgia, South Carolina, and Tennessee).

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term "small business" will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU/SBTRCMIDSOUTHATLANTIC–2016–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $170,000.

Award Floor: $155,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

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DATES: Complete Proposals must be received on or before June 17, 2016, 6:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed.

ADDRESSES: Applications must be electronically submitted through *Grants.gov.* Only applicants who comply with all submission requirements described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Mr. Adam Dorsey, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–1930. Email: *sbtrc@dot.gov.*

A. Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (*i.e.* The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, DOT Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

B. Federal Award Information

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section, 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under DVR 49 parts 23 and 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions. The SBTRCs are established and funded through Cooperative Agreements between eligible applicants and OSDBU. The SBTRCs function as regional offices of OSDBU and fully execute the mission of the OSDBU nationally.

OSDBU enters into Cooperative Agreements with recipients to establish and fund a regional SBTRC. Under the Cooperative Agreement OSDBU will be "substantially involved" with the overall operations of the SBTRC. This involvement includes directing SBTRC staff to travel and represent OSDBU on panels and events. OSDBU will make one award under this announcement. Award ceiling for this announcement is $170,000. The recipient will begin performing on the award on July 1, 2016 and the period of performance (POP) will be July 1, 2016 to June 30, 2017. This is a 1 year grant with an option to renew for 2 additional years at the discretion of U.S. DOT.

Cooperative agreement awards will be distributed to the region(s) as follows:

Mid-South Atlantic Region
Ceiling: $170,000 per year
Floor: $155,000 per year

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding will reimburse an on-site Project Director for *100%* of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. The SBTRC will furnish all labor, facilities and equipment to perform the services described in this announcement.

C. Eligibility

1. To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or

university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501c(3) or 501c(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements/Recipient Responsibilities

(A) Assessments, Business Analyses

Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

(B) General Management & Technical Training and Assistance

Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. A complete list of businesses that have filled out the form shall be submitted as part of the SBTRC report, submitted via email to the Regional Assistance Division on a regular basis (using the SBTRC report). This report will detail SBTRC activities and performance results. The data provided must be supported by the narrative (if asked).

Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

Coordinate efforts with OSDBU in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month. This counseling includes in-person meetings or over the phone, and does not include any time taken to do email correspondence.

(D) Planning Committee

Establish a Regional Planning Committee consisting of at least 10 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRCs headquarters state must have representation on the planning committee. The committee shall be established no later than 60 days after the execution of the Cooperative Agreement between the OSDBU and the selected SBTRC.

Provide a forum for the federal, state, and local agencies to disseminate information about upcoming DOT procurements and SBTRC activities.

Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members (conference calls and/or video conferences are acceptable).

Use the initial session hosted by the SBTRC to explain the mission of the committee and identify roles of staff and the members of the group. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Project Director or his/her designee.

(E) Outreach Services/Conference Participation

Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently are or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU upon request. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, *i.e.*, access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the regional Assistance Division for review and posting on the OSDBU Web site on a regular basis. Clearly identity the events designated for SBTRC participation and include recommendations for OSDBU participation. This information can be submitted as part of the SBTRC report.

Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the OSDBU will provide DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

Submit a conference summary report within the "Events" section of the SBTRC Report. The conference summary report should summarize the activity, contacts made, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor and OSDBU transportation related conference in the region (commonly referred to as "Small Business Summits").

Participate in the SBTRC Monthly teleconference call, hosted by the OSDBU Regional Assistance Division.

(F) Short Term Lending Program (STLP)

Work with STLP participating banks and if not available, other institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP, and/or other financial assistance programs, to the transportation-related small business community. Seminars/workshops must cover the entire STLP/loan process, form completion of STLP/loan applications and preparation of the loan package.

Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of four (4) completed STLP applications per year.

Provide direct support, technical support, and advocacy services to Small and Disadvantaged Businesses interested in obtaining a loan from another type of Government Lending Program. Government Lending Programs include Federal, State, and Local level programs. The SBTRC will be required to generate a minimum of three (3) completed Government Lending Program applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your egion to deliver a minimum of two (2) complete Bonding Education Programs and secure 3% of the total DBE contract value for each transportation project. The BEP consists of the following components: (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants to provide technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver a minimum of ten (10) disadvantaged business participants in the BEP with either access to bonding or a increase in the bonding capacity. The programs will be funded separately and in addition to the amount listed in 1.3 of the solicitation.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to *Executive Order 13506,* and *49 U.S.C. 332(b)(4) & (7),* the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation enemies in their region. The WITI program shall be developed in conjunction with the skill needs of the US DOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

Each region will establish a Women In Transportation Advisory Committee. The committee will provide a forum to identify and provide workable solutions to barriers that women-owned businesses encounter in transportation-related careers. The committee will have 5 members (including the SBTRC Project Director) with a 1 year membership. Meetings will be conducted on a quarterly basis at an agreeable place and time.

3. Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing, and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

D. Application and Submission Information

(A) Format for Proposals

Each proposal must be submitted to Grants.gov in the format set forth in the application form attached as Appendix A to this announcement.

(B) Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section C of this announcement, will submit only one proposal per region for consideration by OSDBU. Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to Grants.gov.

(C) Each applicant must be registered in System for Award Management (SAM) and provide their unique Entity Identifier with the proposal.

(D) Proposals must be received in Grants.gov no later than June 17, 2016, 6:00 p.m. Eastern Standard Time (EST).

E. Application Review

(A) General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and Strategy (25 points)
- Linkages (25 points)
- Organizational Capability (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(B) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section C will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(C) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and establish networks with existing resources in their geographical area. The applicant should describe their strategy to obtain and collaboration on SBTRC from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), State DOTs, and State Highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transporation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(D) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section C. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to transportation-related small businesses in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small business in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(E) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, education levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive and Project Directors must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(F) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section B. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

(G) Scoring Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

(H) Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

F. Federal Award Administration

Following the evaluation outlined in Section E, the OSDBU will announce the awarded applicant with a written Notice of Funding Award. The NOFA will also include the cooperative agreement for signature.

(A) Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Cost Principles and Audit Requirements for Federal Awards found in *2 CFR part 200,* as adopted by DOT as 2 CFR part 1201.

(B) Reporting

Performance Reporting—The recipient of this cooperative agreement must collect information and report on the cooperative agreement performance with respect to the relevant deliverables that are expected to be achieved through the cooperative agreement. Performance indicators will include formal goals or targets, but will include baseline measures for an agreed-upon timeline, and will be used to evaluate and monitor the results that the cooperative agreement funds achieve to ensure that funds achieve the intended long-term outcomes of the cooperative agreement program.

Progress Reporting—The recipient for this cooperative agreement funding must submit quarterly progress reports and annual Federal Financial Report (SF–425) on the financial condition of the cooperative agreement and its progress, as well as an Annual Budget Review and Implementation Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the program.

G. Federal Awarding Agency Contracts

For further information this notice please contact the OSDBU program staff via email at *sbtrc@dot.gov,* or call Adam Dorsey at 202–366–1877. To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions.

H. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT received a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulation as *49 CFR 7.17.* Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued on: May 3, 2016.

Brandon Neal,

Director.

[FR Doc. 2016–11461 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Department of Transportation (DOT), Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice of funding availability for the Southeast Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for, business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, or chambers of commerce, registered with the Internal Revenue Service as 501C(6) or 501C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Southeast Region (Alabama, Florida, U.S. Virgin Islands, and Puerto Rico).

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term "small business" will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU/SBTRCSOUTHEAST–2016–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to Small and Disadvantaged Businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $170,000.

Award Floor: $155,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

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  2. Review and Selection Process
F. Federal Award Administration
  1. Federal Award Notice
  2. Administrative and National Policy Requirements
  3. Reporting
G. Federal Awarding Agency Contacts
H. Other Information

1. Protection of Confidential Business Information
Footnotes

DATES: Complete Proposals must be received on or before June 17, 2016, 6:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed.

ADDRESSES: Applications must be electronically submitted through *Grants.gov.* Only applicants who comply with all submission requirements described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Mr. Adam Dorsey, Program Analyst, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–1930. Email: *sbtrc@dot.gov.*

A. Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (*i.e.,* The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, DOT Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

B. Federal Award Information

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under DVR 49 parts 23 and 26 as Disadvantaged Business Enterprises (SBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions. The SBTRCs are established and funded through Cooperative Agreements between eligible applicants and OSDBU. The SBTRCs function as regional offices of OSDBU and fully execute the mission of the OSDBU nationally.

OSDBU enters into Cooperative Agreements with recipients to establish and fund a regional SBTRC. Under the Cooperative Agreement OSDBU will be "substantially involved" with the overall operations of the SBTRC. This involvement includes directing SBTRC staff to travel and represent OSDBU on panels and events. OSDBU will make one award under this announcement. Award ceiling for this announcement is $170,000. The recipient will begin performing on the award on July 1, 2016 and the period of performance (POP) will be July 1, 2016 to June 30, 2017. This is a 1 year grant with an option to renew for 2 additional years at the discretion of U.S. DOT.

Cooperative agreement awards will be distributed to the region(s) as follows:

Southeast Region
Ceiling: $170,000 per year
Floor: $155,000 per year

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and U.S. DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding will reimburse an on-site Project Director for *100%* of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. The SBTRC will furnish all labor, facilities and equipment to perform the services described in this announcement.

C. Eligibility

1. To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the

documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements/Recipient Responsibilities

(A) Assessments, Business Analyses

Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

(B) General Management & Technical Training and Assistance

Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. A complete list of businesses that have filled out the form shall be submitted as part of the SBTRC report, submitted via email to the Regional Assistance Division on a regular basis (using the SBTRC report). This report will detail SBTRC activities and performance results. The data provided must be supported by the narrative (if asked).

Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities. Coordinate efforts with OSDBU in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month. This counseling includes in-person meetings or over the phone, and does not include any time taken to do email correspondence.

(D) Planning Committee

Establish a Regional Planning Committee consisting of at least 10 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRCs headquarters state must have representation on the planning committee. The committee shall be established no later than 60 days after the execution of the Cooperative Agreement between the OSDBU and the selected SBTRC.

Provide a forum for the federal, state, and local agencies to disseminate information about upcoming DOT procurements and SBTRC activities. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members (conference calls and/or video conferences are acceptable).

Use the initial session hosted by the SBTRC to explain the mission of the committee and identify roles of staff and the members of the group. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Project Director or his/her designee.

(E) Outreach Services/Conference Participation

Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently are or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU upon request. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a Web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, *i.e.*, access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the regional Assistance Division for review and posting on the OSDBU Web site on a regular basis. Clearly identity the events designated for SBTRC participation and include recommendations for OSDBU participation. This information can be submitted as part of the SBTRC report.

Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the OSDBU will provide DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

Submit a conference summary report within the "Events" section of the SBTRC Report. The conference summary report should summarize the activity, contacts made, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor and OSDBU transportation related conference in the region (commonly referred to as "Small Business Summits").

Participate in the SBTRC Monthly teleconference call, hosted by the OSDBU Regional Assistance Division.

(F) Short Term Lending Program (STLP)

Work with STLP participating banks and if not available, other institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP, and/or other financial assistance programs, to the transportation-related small business community. Seminars/workshops must cover the entire STLP/loan process, form completion of STLP/loan applications and preparation of the loan package.

Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of four (4) completed STLP applications per year. Provide direct support, technical support, and advocacy services to Small and Disadvantaged Businesses interested in obtaining a loan from another type of Government Lending Program. Government Lending Programs include Federal, State, and Local level programs. The SBTRC will be required to generate a minimum of three (3) completed Government Lending Program applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your egion to deliver a minimum of two (2) complete Bonding Education Programs and secure 3% of the total DBE contract value for each transportation project. The BEP consists of the following components; (1) the stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants to provide technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver a minimum of ten (10) disadvantaged business participants in the BEP with either access to bonding or a increase in the bonding capacity. The programs will be funded separately and in addition to the amount listed in 1.3 of the solicitation.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to *Executive Order 13506,* and *49 U.S.C. 332(b)(4) & (7),* the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, and retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation enemies in their region. The WITI program shall be developed in conjunction with the skill needs of the US DOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

Each region will establish a Women In Transportation Advisory Committee. The committee will provide a forum to identify and provide workable solutions to barriers that women-owned businesses encounter in transportation-related careers. The committee will have 5 members (including the SBTRC Project Director) with a 1 year membership. Meetings will be conducted on a quarterly basis at an agreeable place and time.

3. Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing, and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

D. Application and Submission Information

(A) Format for Proposals

Each proposal must be submitted to Grants.gov in the format set forth in the application form attached as Appendix A to this announcement.

(B) Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section C of this announcement, will submit only one proposal per region for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to *Grants.gov.*

(C) Each applicant must be registered in System for Award Management (SAM) and provide their unique Entity Identifier with the proposal.

(D) Proposals must be received in Grants.gov no later than June 17, 2016, 6:00 p.m. Eastern Standard Time (EST).

E. Application Review

(A) General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(B) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section C will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(C) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and establish networks with existing resources in their geographical area. The applicant should describe their strategy to obtain and collaboration on SBTRC from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), State DOTs, and State Highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transporation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(D) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section C. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to transportation-related small businesses in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small business in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally, a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(E) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, education levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive and Project Directors must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(F) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section B. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

(G) Scoring Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which will include a site visit, before awarding the cooperative agreement.

(H) Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

F. Federal Award Administration

Following the evaluation outlined in Section E, the OSDBU will announce the awarded applicant with a written Notice of Funding Award. The NOFA will also include the cooperative agreement for signature.

(A) Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Cost Principles and Audit Requirements for Federal Awards found in *2 CFR part 200,* as adopted by DOT as 2 CFR part 1201.

(B) Reporting

Performance Reporting—The recipient of this cooperative agreement must collect information and report on the cooperative agreement performance with respect to the relevant deliverables that are expected to be achieved through the cooperative agreement. Performance indicators will include formal goals or targets, but will include baseline measures for an agreed-upon timeline, and will be used to evaluate and monitor the results that the cooperative agreement funds achieve to ensure that funds achieve the intended long-term outcomes of the cooperative agreement program.

Progress Reporting—The recipient for this cooperative agreement funding must submit quarterly progress reports and annual Federal Financial Report (SF–425) on the financial condition of the cooperative agreement and its progress, as well as an Annual Budget Review and Implementation Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the program.

G. Federal Awarding Agency Contracts

For further information this notice please contact the OSDBU program staff via email at *sbtrc@dot.gov,* or call Adam Dorsey at 202–366–1877. To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions.

H. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT received a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulation as *49 CFR 7.17.* Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued on: May 3, 2016.

Brandon Neal,

Director.

[FR Doc. 2016–11463 Filed 5–13–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Acting Director of OFAC of one individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on May 11, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act provides that the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security, may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On May 11, 2016, the Acting Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individual

1. ESPINOZA AGUILAR, Diana (a.k.a. ESPINOZA AGUILAR, Altagracia; a.k.a. ESPINOZA AGUILAR, Diana Altagracia); DOB 17 Jul 1970; POB Matachi, Chihuahua, Mexico; C.U.R.P. EIAD700717MCHSGN09 (Mexico) (individual) [SDNTK] (Linked To: CARO QUINTERO, Rafael). Designated for acting for or on behalf of Rafael CARO QUINTERO, and therefore meets the criteria for designation pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).

Dated: May 11, 2016.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–11449 Filed 5–13–16; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–88; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–88. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–88 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–88

Item	Subject	FAR case	Analyst
I	High Global Warming Potential Hydrofluorocarbons	2014–026	Gray.
II	Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations.	2015–020	Francis.
III	Basic Safeguarding of Contractor Information Systems	2011–020	Davis.
IV	Improvement in Design-Build Construction Process	2015–018	Glover.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–88 amends the FAR as follows:

Item I—High Global Warming Potential Hydrofluorocarbons (FAR Case 2014–026)

This final rule implements Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential—hydrofluorocarbons (HFCs). The rule also requires contractors to report annually the amount of HFCs contained in equipment delivered to the Government or added or taken out of Government equipment under service contracts. This will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693 on Planning for Sustainability in the Next Decade. This rule applies to small entities because about three-quarters of the affected contractors are small businesses and precluding them would undermine the overall intent of this policy. However, to minimize the impact this rule could have on all businesses, especially small businesses, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Item II—Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations (FAR Case 2015–020)

This final rule amends the FAR to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. When FAR Case 2003–022 was published as a rule in 2004, the definition for SAT at FAR 2.101 was changed, but the drafters of the rule also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. This rule reinstates the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Accordingly, this rule provides contracting officers with more flexibility when contracting in support of overseas humanitarian or peacekeeping operations. This final rule does not place any new requirements on small entities.

Item III—Basic Safeguarding of Contractor Information Systems (FAR Case 2011–020)

This final rule amends the FAR to add a new FAR subpart 4.19 and contract clause 52.204–21 for the basic safeguarding of covered contractor information systems, *i.e.*, that process, store, or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding controlled unclassified information (CUI) as established by Executive Order 13556. Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection. This rule will not have a significant economic impact on contractors (including small business concerns) or the Government.

Item IV—Improvement in Design-Build Construction Process (FAR Case 2015–018)

This final rule revises the FAR to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. When a two-phase design-build construction acquisition is valued at greater than $4 million, section 814 requires the head of the contracting activity to approve a contracting officer determination to select more than five offerors to submit phase-two proposals. The approval level is delegable no lower than the senior contracting official within the contracting activity. This rule change does not place any new requirements on small entities.

Item V—Technical Amendments

Editorial changes are made at FAR 1.106.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–88 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–88 is effective May 16, 2016 except for items I, II, III, and IV, which are effective June 15, 2016.

Dated: May 4, 2016.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2016.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: April 28, 2016.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2016–10995 Filed 5–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 7, 11, 23, 25, and 52

[FAC 2005–88; FAR Case 2014–026; Item I; Docket No. 2014–0026; Sequence 1]

RIN 9000–AM87

Federal Acquisition Regulation: High Global Warming Potential Hydrofluorocarbons

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential (GWP) hydrofluorocarbons (HFCs). This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order on Planning for Sustainability in the Next Decade.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703–795–6328, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2014–026.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 80 FR 26883, on May 11, 2015, to implement Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high GWP HFCs. This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693, Planning for Federal Sustainability in the Next Decade, of March 25, 2015.

Sixteen respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

In response to public comments received, the final rule contains the following changes from the proposed rule:

- Clarified the definition of "high global warming potential hydrofluorocarbons" to make it specific to a particular end use.
- Included the use of reclaimed HFCs as products that minimize or eliminate the use, release, or emission of high GWP HFCs.
- Clarified that the clause prescription exception is for supplies that will be delivered outside the United States and its outlying areas as well as for contracts for services performed outside the United States and its outlying areas.
- Added in the clauses at 52.223–20 and 52.223–21 environmental, technical, and economic factors to consider when determining feasibility.

B. Analysis of Public Comments

1. General

a. Support the Objectives of the Rule

Comments: Many of the respondents expressed specific support for the objectives of the rule. Several respondents applauded DoD, GSA, and NASA in proposing that Federal agencies procure, when feasible, alternatives to high-GWP HFC refrigerants. Other respondents stated that the proposed rule is a step in the right direction and could have considerable impact on reducing the Government's greenhouse gas emissions and helping Federal agencies and departments meet several Executive actions and orders pertaining to HFCs.

Response: Noted.

b. Oppose the Objectives of the Rule

Comment: One respondent believed that global warming is a farce and that the Government should not be allowed to acquire anything because of global warming.

Response: The FAR Council is responsible for the implementation of the Executive orders and policies of the Administration. DoD, NASA, and GSA have prepared this rule to implement and facilitate compliance with Executive Order 13693, Planning for Sustainability in the Next Decade, and the President's Climate Action Plan.

2. Definition of "high global warming potential hydrofluorocarbons"

Various respondents commented on the definition of "high global warming potential hydrofluorocarbons." One of these respondents questioned whether the identification of a lower GWP HFC alternative pursuant to the SNAP program meant that the Government would be required to use the alternative.

Response: The Councils have further clarified in the final rule that the term "high global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap.* For every end use, the SNAP program lists include several different alternatives as acceptable for the same end use or application and provides information, including the GWPs of alternatives. The decision as to which of the SNAP-listed acceptable alternatives to select in a particular end use should emphasize the alternative with the lowest GWP that meets the needs of the user.

With regard to the required use of a lower GWP HFC product identified in the SNAP list of alternatives products, the Government's decision to do so must take into consideration the feasibility of moving on to an alternative. This decision will require the assessment of a number of factors, including lifecycle costs and the overall energy efficiency achieved through the substitution of a lower GWP HFC product.

Comment: One respondent criticized the SNAP program, upon which the proposed definition is based. Among other concerns, the respondent believes that the SNAP program has identified some substitutes that have significant drawbacks, including poor thermal efficiency, flammability issues, processing difficulties, and limited global availability. Similarly, another respondent did not agree that the definition of high GWP HFCs should be created by simple reference to the SNAP program, because other relevant factors need to be considered (see also section 3.d.). Another respondent commented that the term "high global warming potential hydrofluorocarbons" was defined solely in term of relative GWP (compared to alternatives approved under the EPA's SNAP program.) The respondent is concerned that the policies based on this definition fail to take into account other major causes of climate impact.

Response: In response to the concern raised by one respondent regarding significant drawbacks of some substitutes identified by SNAP, it is helpful to understand the SNAP program's framework for review and listings. EPA applies seven specific criteria for determining whether a substitute is acceptable or unacceptable. These criteria, which can be found at 40 CFR 82.180(a)(7), include atmospheric effects and related health and environmental effects, ecosystem risks, consumer risks, flammability, and cost and availability of the substitute. To enable EPA to assess these criteria, EPA requires submitters to include various information including ozone depletion potential (ODP), GWP, toxicity, flammability, and the potential for human exposure. The SNAP program does not review for a substitute's performance or efficacy. The SNAP list of alternatives evolves as new substitutes become available and substitutes that pose significantly greater risk than other available substitutes are determined to no longer be acceptable for use. These changes occur because of the changing availability of substitutes for a specific use as well as EPA's overall understanding of the environmental and human health impacts of substitutes already listed as compared with new substitutes. However, as changes are made to the SNAP lists, EPA assures users that multiple substitutes are available for any given end use and that end users continue to have options.

In its recent final rule, published at 80 FR 42869, on July 20, 2015, EPA modified the listings for certain HFCs and HFC blends in various end uses in the aerosols, foam blowing, and refrigeration and air conditioning sectors where other alternatives were available or potentially available that posed lower overall risk to human health and the environment. Pursuant to the guiding principles of the SNAP program, the action did not specify that any HFCs are unacceptable across all sectors and end uses. Consistent with section 612 of the Clean Air Act (42 U.S.C. 7671k) as EPA has historically interpreted it under the SNAP program, EPA made the modifications based on evaluation of the substitutes addressed in that action using the SNAP criteria for evaluation and considering the current suite of other available and potentially available substitutes.

For the refrigerant and foam blowing agent end uses, equipment design is critical. Thus, there is a range of thermal conductivity and insulation values among the acceptable alternatives, with some having lower values than the HFCs previously used (as well as ozone-depleting substances (ODS)) some having higher values, and others having comparable values. In EPA's recent rulemaking published at 80 FR 42869, on July 20, 2015, EPA noted that no information provided to EPA suggests that the alternatives that remain acceptable result in lower energy efficiency. In fact, as stated in the preamble to the rule, available information indicates that the opposite can be true, that the acceptable alternatives not subject to a status change have been used in equipment or used to produce insulating foam that provide for better energy efficiency.

In response to the respondent who disagreed that the definition of high GWP HFCs should refer just to the SNAP program, the Councils note that the definition does not bind the end user to select any specific alternative or to ignore assessment of the unique needs that end user may be facing. Rather, requiring activities can use the information provided by the SNAP list of alternatives, including information on the GWP of alternatives, in addition to other factors, in the selection of products and equipment that best meet their needs. Please see related response below regarding comments on the feasibility of moving to alternatives.

In response to the respondent who commented that the term "high global warming potential hydrofluorocarbons" was defined solely in terms of relative GWP (compared to other alternatives approved under the EPA's SNAP program) and was concerned that this failed to take into account other major causes of climate impact, the term is intended to reflect differences in GWP. This is consistent with how climate impacts are considered under the SNAP program (See section VII.A.3., GWP Considerations, in the preamble to the recent EPA SNAP final rule published at 80 FR 42870 at 42937, on July 20, 2015). Users may take into account additional factors, such as energy efficiency, in deciding which of the lower-GWP alternatives listed as acceptable under SNAP meet their needs. For clarification, please also see the response below that discusses other factors such as energy efficiency, which are related to the performance of the equipment, whereas GWP relates to the intrinsic characteristic and potential environmental impact of the chemical itself.

3. Policy.

a. Lower vs. lowest/climate-friendly

Comment: One respondent, primarily addressing refrigerants, recommended addition of the following definitions to the rule:

"Climate-friendly" alternative means an alternative that is listed as acceptable under the EPA's SNAP program (40 CFR part 82, subpart G) that has a GWP of less than 150.

"Lowest GWP alternative" means an alternative that is identified as acceptable under the EPA's SNAP program and has the lowest GWP compared to all other acceptable alternatives for the relevant end use and has a GWP under 150 for new equipment and a GWP at least 50 percent lower than the current refrigerant for retrofits.

The respondent further recommended a policy that would avoid procurement of mid-range GWP alternatives (from 300 to 1500 GWP) if truly low GWP alternatives have been proven and commercialized, because use of mid-range alternatives would set up a circumstance where a future phase-out in just a few years will be necessary to remove these mid-range GWP alternatives due to their impact on the climate. Consistent with the definition recommended by the respondent, the respondent also recommended that the Government should not purchase any new equipment or product unless it has a refrigerant with a GWP of less than 150 and for retrofits, higher GWP refrigerants can be used if they have GWPs of at least 50 percent less than the current refrigerant that will be replaced. Otherwise, the respondent recommended that the old system should be decommissioned and replaced.

Response: While GWP is an important criterion, it should not be the sole criterion for consideration. The EPA SNAP program conducts comparative risk analyses for each end use and alternative, and has not set specific GWP limits for acceptable alternatives in a specific end use. For example, while an alternative refrigerant in one application might have a GWP that meets the respondent's proposed GWP limit of 150, there may be other human health or environmental considerations for the particular end use or application (*e.g.*, toxicity limits, flammability) that may lead the user to determine that another alternative is more suitable for that particular application. For this reason and others, Federal agency requiring activities and contractors need the flexibility to be able to evaluate the entire suite of lower GWP alternatives and to balance direct climate impacts, energy efficiency, safety, performance, and other user needs before selecting the one most appropriate for their specific use.

b. Timing

Various respondents commented on the timing of when the FAR rule should take effect.

Comment: Several respondents recommended that the enactment of this rule should be tied to the HFC conversion timelines within the EPA SNAP rule published at 80 FR 42870, on July 20, 2015, and that this rule is imposing use of lower GWP alternatives "earlier than required." Unless otherwise noted, all references to a SNAP rule in this document are in reference to the final rule published at 80 FR 42870, on July 20, 2015. According to one of the respondents, the SNAP final rule specified that use of HFC–134a would be unacceptable for use in polystyrene extruded boardstock and billet as of January 1, 2021.

Response: It is not the intent of this rule to require conversion to alternatives on earlier timelines than in the SNAP final rule. Rather, as stated in the background section of the proposed FAR rule, the purpose of this final rule is to facilitate the purchase of cleaner alternatives to HFCs whenever feasible and transition over time to equipment that uses safer and more sustainable alternatives.

Comment: A respondent also recommended coordinating with Department of Energy rulemaking on energy efficiency and conservation standards. Companies are working to comply with these stringent new standards.

Response: The Councils are aware of the Department of Energy (DOE) rulemaking titled, "Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings' Baseline Standards Update", published at 80 FR 68749, on November 6, 2015, and have taken the DOE rules into account in drafting this final rule. The rule requires reduction in the use, release, and emissions of high GWP HFCs only when feasible. The clauses state that a determination of feasibility would include consideration of energy efficiency.

Comment: One respondent noted that there is a great range of speeds by which the sectors, and the companies within them, who use HFCs, can transition into lower GWP alternatives. Another respondent stated that a transition to low GWP blowing agents must be conducted over a timeline that allows individual manufacturers to identify suitable alternatives and conduct necessary product development and testing to fully commercialize new formulations. Another respondent recommended modifying the clause at FAR 52.223–12(c)(1) to require transitioning "at the earliest feasible time" from high GWP HFCs to acceptable alternatives.

Response: The President's Climate Action Plan specifically directs agencies to purchase cleaner alternatives to HFCs whenever feasible and transition over time to equipment that uses safer and more sustainable alternatives. The language used in the Climate Action Plan: (1) Recognizes that there are technical hurdles that must be overcome to identify suitable alternatives, conduct necessary product development and testing, and fully commercialize new formulations; and (2) envisions a transition "over time." Accordingly, this final rule allows existing Government equipment to be utilized until the end of its useful life, thus minimizing stranded capital.

c. Acceptability and Feasibility

Comments: More than half of the respondents commented on the need to consider factors other than low GWP value in determining the acceptability and/or feasibility of using a lower GWP alternative. According to many respondents, lower GWP alternatives must be both environmentally and economically acceptable. One respondent stated that considering only the GWP of a compound may not be appropriate, depending on the circumstances of a particular use. This respondent also stated that GWP alone is an insufficient measure of a product's impact on human health and the environment. A few respondents stated the need for a definition of "feasible." They noted that without a definition, contractors will have little guidance as to when adoption of low GWP substances would be appropriate and/or required and the rule will have little impact on procurement decisions.

i. Life Cycle/Energy Efficiency

Many of the respondents recommended consideration of the total life-cycle of an alternative product, such as in-use emission rates and energy efficiency benefits.

- With regard to refrigerants, a respondent commented that the majority of the climate impact from refrigerant used results from the energy consumed by the air conditioning system (*i.e.*, the indirect impact) and not from the GWP of the refrigerant itself (*i.e.*, the direct climate impact). According to the respondent, refrigerant selection has a substantial impact on the energy efficiency of the air conditioning system in which the refrigerant will be used.
- With regard to foam insulation, a respondent commented on the importance of the use of thermal insulation for increased energy efficiency to reduce global warming. Likewise, another respondent pointed out the need to consider the life-cycle benefits of products, because if less energy efficient insulation products are used in the construction of a building the result may be increased greenhouse gas emissions over the life of the building or facility.

ii. Safety—Flammability

Several respondents commented on the need to consider key product attributes that affect safety, such as flammability. Another respondent mentioned that feasible alternatives should consider standards and codes compliance (such as safety standards).

iii. Technical Capability

Several respondents commented on the necessity to consider technical capability of the proposed alternative to avoid inadvertently selecting a product that will prove to be less energy efficient.

iv. Commercial Availability

Several respondents commented on the need for alternatives to be commercially available. One respondent recommended that absence of commercially available alternatives should constitute a viable exemption from the provisions of the rule. One respondent recommended that decisions on feasibility of low GWP alternatives need to be assessed based on available technologies.

v. Cost

Several respondents mentioned cost as another factor for consideration. One respondent asked whether the taxpayer should be forced to pay more than the general public, by adopting lower GWP products earlier than required.

vi. Definition

One of the respondents recommended defining "feasibility" as "a commercially available alternative with a GWP lower than that of the currently used substance in the relevant application, that (1) is identified by EPA as an acceptable alternative under 40 CFR part 82, which increases the total cost of the installation or bid by not more than 10 percent more than would be the cost if high GWP substances were used."

Response: The concerns raised by the respondents in paragraphs 3.c.i. through vi. of this analysis of the public comments are issues considered by EPA in making listing decisions under the SNAP program. Section 612 of the Clean Air Act provides that EPA must prohibit the use of a substitute where EPA has determined that there are other available substitutes that pose less overall risk to human health and the environment for that use. EPA reviews substitutes using a comparative risk framework and GWP is only one of several criteria EPA considers in its overall evaluation. EPA also considers factors such as ozone depletion potential, exposure assessments, flammability, toxicity, and other environmental impacts. In addition, in the recent change of status rule in which EPA changed the status of a number of high GWP substitutes from acceptable to unacceptable, EPA considered the technical challenges of a transition and the supply of other alternatives in establishing the transition date. As the term is used in this rule, "feasible" means not only capable of being accomplished, but capable of being accomplished successfully and suitably. All of the factors mentioned by respondents are relevant in the decision as to which acceptable alternative is preferable in a given application. Alternatives that have been determined acceptable by EPA under the SNAP Program should still be evaluated in each particular application in terms of environmental, technical, and economic feasibility. The FAR Council does not have a basis (such as statute or Executive Order) upon which to establish a specific cost differential that would constitute an unreasonable cost. An assessment of whether a cost is unreasonable depends partly on the benefits to be derived from use of the alternative and other economic factors. Therefore, the final rule does not define the term "feasibility," but provides direction to the Federal user and contractor in terms of factors to be considered when determining the feasibility of using an acceptable lower GWP alternative (FAR 52.223–20, Aerosols, and 52.223–21, Foams).

d. Refrigerant Management

Comment: Many of the respondents commented on the need for better refrigerant management, including the recovery, reclamation, and reuse of refrigerant.

- *Leaks and accidental or intentional venting of refrigerant.* As stated by one respondent, refrigeration and air conditioning systems are prone to leaks during normal operations. Even with aggressive leak detection, these appliances and systems require servicing to maintain the proper refrigerant change and performance. Another respondent emphasized that air conditioning and refrigeration systems are actually non-emissive uses of HFCs since these are closed systems. The concern with HFCs, therefore, is not the use, but the misuse. According to the respondent, the vast amount of HFC emissions result from leaks and accidental or intentional venting of refrigerant.
- *Increase the use of reclaimed refrigerants.* According to one respondent, nearly all lost refrigerant is replaced with newly produced virgin refrigerant. Another respondent recommended that the benefits of the proposed rule could be significantly enhanced by defining acceptable low GWP alternatives to include reclaimed refrigerants. Rather than wait for low GWP alternatives to be deployed in retrofitted or newly installed equipment, the Federal Government can significantly reduce greenhouse gas emissions in the near-term by including reclaimed HFC refrigerant as part of the procurement priorities. Another respondent recommended that the Government should give preference to the use of reclaimed refrigerant to service existing Federal buildings and facilities, just like the Federal Government promotes recycled paper and other consumer goods.
- *Improved refrigerant management.* As stated by a respondent, a Federal program promoting reclaimed refrigerant will encourage better refrigerant management practices in the private sector, because companies will recognize that their used refrigerant has an economic value. Another respondent noted that the policy would provide incentive for recovery of HFC refrigerant from older end-of-life equipment (currently only approximately 10 percent is recovered and reclaimed).
- *Less production of virgin HFC refrigerants.* One respondent stated that the goal should be to limit production of all virgin refrigerants, including lower GWP HFCs. As stated by another respondent, use of reclaimed refrigerant displaces additional production of new HFC refrigerant, thereby preventing greenhouse gas emissions that would otherwise occur.

Response: The Councils recognize that refrigerant management is an important way to reduce climate-damaging and ozone-depleting emissions from equipment used for air-conditioning and refrigeration. While the existing EPA regulations prohibit any person from knowingly venting, releasing, or disposing into the environment any ozone-depleting or HFC refrigerant in the course of maintaining, servicing, repairing, or disposing of air-conditioning or refrigeration appliances, they do not establish requirements to repair leaks or specify other servicing requirements for equipment containing HFCs. EPA has recently proposed updating the existing refrigerant management requirements under section 608 of the Clean Air Act and extending them to cover servicing practices for HFCs (see 80 FR 69457, dated November 9, 2015).

There are also environmental benefits to promoting the use of reclaimed material over virgin production. Both newly-produced and reclaimed refrigerants must meet the same purity requirements and thus reclaimed refrigerant can be used instead of newly produced refrigerants. This final rule provides use of reclaimed HFCs as an example of sustainable acquisition under FAR 11.002(d)(1) and encourages their use at FAR clause 52.223–12(c)(4).

4. Exceptions

a. Outside the United States

Various respondents commented on the exception in the proposed rule for contracts that will be performed outside the United States and its outlying areas.

Comment: One respondent requested clarification of what "performed outside the United States and its outlying areas" means for the acquisition of supplies. Another respondent stated that the rule should apply to both domestic and foreign procurement decisions, because limiting the scope to domestic acquisitions misses an opportunity to further reduce greenhouse gas emissions. Other respondents stated that an effective means of reducing the future climate change contribution of HFCs must be global in nature. One respondent recommended that that application to contracts outside to United States and its outlying areas should be excepted only if proven to be unfeasible.

Response: The clause prescription at FAR 23.804 has been clarified by specifying that the exception to use of the clause is for contracts for supplies to be delivered outside the United States and its outlying areas, or contracts for services to be performed outside the United States and its outlying areas. This rule only applies to contracts for supplies to be delivered within the United States or its outlying areas or to services to be performed within the United States or its outlying areas.

b. Military and Space Activities

Comment: One respondent asked whether DoD, GSA, and NASA would be prohibited from taking advantage of the SNAP exemptions provided for military and space activities.

Response: Nothing in this rule precludes Federal agencies from taking advantage of the exemptions to the SNAP requirements, as currently provided in the SNAP final rule for military and space- and aeronautics-related applications. However, this rule, unlike the SNAP Program, requires transitioning in advance of the SNAP deadlines, only when feasible. Therefore, an exception for military and space activities is unnecessary. In accordance with the overall construction of the rule, exemptions for military and space activities would fall under the general exemption as infeasible.

In addition, the FAR clauses state that a contractor shall transition to lower GWP alternatives "unless otherwise specified in the contract." In those cases where a Federal agency has critical uses where only qualified high GWP HFCs may be used, these would be specified in a contract and unqualified lower GWP alternatives would not be allowed.

c. Low Temperature Refrigeration Systems

Comment: One respondent recommended an exemption for low temperature refrigeration systems operating below −50 °C. The respondent stated that in both the EU and Canada, similar low GWP initiatives have allowed such an exemption. According to the respondent, due to issues of flammability, energy efficiency, and technical capability, the respondent does not know of any low GWP solutions that meet the needs of ultra-low temperature refrigeration systems.

Response: There is no need for a special exemption for a low temperature refrigeration system. The concept of feasibility is addressed and an exemption arises if use of lower GWP alternatives is found to be infeasible. If low GWP alternatives do not meet the needs of ultra-low temperature refrigeration systems, then transition is not feasible and, therefore, not required by this rule.

5. Other

a. Labeling

Comment: One respondent recommended that contractors should also be required to label products which contain or are manufactured with HFCs.

Response: The labeling requirement for products that contain or are manufactured with Ozone-Depleting Substances (ODS) at paragraph (b) of FAR clause 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, is required by statute (42 U.S.C. 7671j) and EPA regulations (40 CFR part 82, subpart E). There is not a comparable requirement for high GWP HFCs.

b. Buildings With Multiple Systems

Comment: With regard to the reporting requirement in FAR 52.223–12(d), the respondent recommended changing "50 or more pounds" to "25 or more pounds" and that a building containing multiple systems that each contain individually less than 25 pounds of HFCs or refrigerant blends containing HFCs should be assessed as the entire building's refrigerant use and not on an individual system level.

Response: When drafting the proposed rule, the 50-pound threshold was chosen in order to eliminate tracking and reporting on thousands of pieces of smaller equipment, thereby minimizing administrative burden and costs to contractors, including many small businesses; and also recognizing that larger systems such as building chillers, commissary/large commercial refrigeration systems, and industrial process refrigeration systems likely contribute the largest percentage of total HFC emissions. This 50-pound threshold is also consistent with other existing regulatory requirements for refrigerants imposed under the Clean Air Act and 40 CFR part 82. Recognizing that EPA has proposed (see 80 FR 69457, dated November 9, 2015) updating and expanding the coverage of the refrigerant management requirements established under section 608 of the Clean Air Act, if those requirements are amended, they would be applicable to the public and private sectors.

c. Foreign Acquisition

Comment: One respondent recommended that the rule should clarify that if certain products identified as acceptable under the EPA SNAP program are available in other markets but not available or not available at commercial levels in the U.S., then the products may be acquired under the nonavailability exception to the Buy American statute (see FAR 25.103).

Response: FAR part 25, Foreign Acquisition, addresses domestic source restrictions, including the Buy American Act. However, not all acquisitions are subject to the Buy American Act (*e.g.*, when the acquisition is covered by the World Trade Organization Government Procurement Agreement). Other domestic source restrictions may also apply, and there are sanctions against purchases from certain countries. FAR part 23 must be read in conjunction with FAR part 25.

d. Ozone-Depleting Substances

Comment: One respondent is concerned that the proposed clause at FAR 52.223–12, Maintenance, Service, Repair, Recycling, or Disposal of Refrigeration Equipment and Air Conditioners, does not include ODS within its scope.

Response: This rule is not intended to suggest that users revert to an ODS in lieu of a high-GWP HFC. The language in the rule leaves the current ODS regulatory language, currently at FAR subpart 23.8, in place and only adds language dealing with high GWP HFCs. The definition of "ozone-depleting substance" as any substance designated by the EPA in 40 CFR part 82 also remains in FAR part 2. The language also maintains the current FAR 23.803(a)(2) preference to the procurement of substances that reduce overall risks to human health and the environment by the depletion of ozone in the upper atmosphere.

e. Specific Refrigerants, Foams, and Aerosols

Comments: Several respondents commented on specific refrigerants, foams, or aerosols and lower GWP alternatives.

- One respondent sent information on a low GWP substitute for HFC–134a.
- One respondent included a list of some examples of available low GWP replacements for high GWP HFCs by application (*i.e.*, refrigerants, foam, and aerosols).
- Another respondent was concerned that the rule does not require an alternative to the most commonly used refrigerant, HCFC–22, which is both an ODS and has a high GWP, because it is determined to be acceptable by EPA under SNAP.

Response: The information on the low GWP alternatives is noted. While the revised FAR subpart 23.8 makes no explicit mention of HCFC–22, or any other specific substance, the regulation refers to EPA's SNAP program for the list of acceptable alternatives. HCFC–22 remains acceptable as a refrigerant under SNAP. However, existing regulations effectively prohibit the use of virgin HCFC–22 to manufacture a new appliance or retrofit an existing appliance (see 40 CFR 82.15(g)(2)). This restriction does not affect the use of used, recovered, and recycled HCFC–22. Regulations also effectively prohibit the manufacture or import of appliances and appliance components that are pre-charged with HCFC–22 (see 40 CFR 82.304).

Comment: One respondent recommended an additional clause to address clean agent fire suppression.

Response: The suggested clause is outside the scope of this case and could not be included in the final rule without publishing for public comment.

III. Applicability

This rule will apply to all acquisitions inside the United States and its outlying areas of products or services containing or using high GWP HFCs, including—

- Acquisitions that do not exceed the simplified acquisition threshold; and
- Commercial items (including commercially available off-the-shelf items) that use FAR part 12 procedures.

A majority of the acquisitions involving high GWP HFCs do not exceed the simplified acquisition threshold. Applicability of the requirements below the simplified acquisition threshold is necessary to be effective and to cover a significant number of actions and dollars that fall below this threshold. However, the reporting requirement applies only for delivery of, or maintenance, service, repair and disposal of, equipment or appliances normally containing 50 pounds or more of HFCs or refrigerant blends containing HFCs.

Likewise, a majority of the acquisitions involving high GWP HFCs involve the acquisition of commercial items. Applicability of the requirements to commercial items is necessary to be effective and include a significant number of actions and dollars for commercial item acquisitions.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

> This rule is necessary to implement Executive branch policy stated in the President's Climate Action Plan. The objective of this rule is to require Federal agencies to procure climate-friendly chemical alternatives to high global warming potential (GWP) hydrofluorocarbons (HFCs) and allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of Executive Order 13693, Planning for Sustainability in the Next Decade.
>
> There were no issues raised by the public comments in response to the initial regulatory flexibility analysis.
>
> Based on FPDS data for Fiscal Year 2015, this rule will apply to approximately 1400 small business contractors that provide certain supplies (including equipment and appliances) that contain HFCs to the Federal Government and about 347 small business contractors that provide maintenance, service, repair, or disposal of refrigeration equipment or air conditioners. In addition, although the clauses at 52.223–20, Aerosols, and 52.223–21, Foams, do not contain any reporting requirements, these clauses also apply respectively to solicitations and contracts that involve repair or maintenance of electronic or mechanical devices and construction of buildings and facilities.
>
> DoD, GSA, and NASA estimate an average reporting burden of about 8 hours per year for each small business providing supplies that contain high GWP HFCs or maintenance, repair, or disposal of refrigeration equipment or air conditioners.
>
> DoD, GSA, and NASA did not identify any significant alternatives to the rule that would accomplish the stated objectives of the President's Climate Action Plan and the Executive Order.
>
> It is necessary for the rule to apply to small entities, because about three-quarters of the affected contractors are small businesses and excluding them would minimize the importance of this policy and may prevent the Government from meeting the objective of this policy. Every effort has been made to minimize the burdens imposed. For example, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0191, titled: "High Global Warming Potential Hydrofluorocarbons."

List of Subjects in 48 CFR Parts 1, 2, 7, 11, 23, 25, and 52

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA and NASA amend 48 CFR parts 1, 2, 7, 11, 23, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 7, 11, 23, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by adding to the table, in numerical order, FAR segments "52.223–11" and "52.223–12" with their corresponding OMB control number "9000–0191".

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definitions "Global warming potential", "High global warming potential hydrofluorocarbons", "Hydrofluorocarbons", "Manufactured end product", and "Products" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

* * * * *

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap/*).

* * * * *

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

* * * * *

Manufactured end product means any end product in product and service codes (PSC) 1000–9999, except—

(1) PSC 5510, Lumber and Related Basic Wood Materials;

(2) Product or service group (PSG) 87, Agricultural Supplies;

(3) PSG 88, Live Animals;

(4) PSG 89, Subsistence;

(5) PSC 9410, Crude Grades of Plant Materials;

(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

* * * * *

Products has the same meaning as *supplies.*

* * * * *

PART 7—ACQUISITION PLANNING

■ 4. Amend section 7.103 by revising paragraph (p)(2) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(p) * * *

(2) Comply with the policy in 11.002(d) regarding procurement of biobased products, products containing recovered materials, environmentally preferable products and services (including Electronic Product Environmental Assessment Tool (EPEAT®)-registered electronic products, nontoxic or low-toxic alternatives), ENERGY STAR® and Federal Energy Management Program-designated products, renewable energy, water-efficient products, non-ozone-depleting products, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons;

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 5. Amend section 11.002 by revising paragraph (d)(1)(vi) to read as follows:

11.002 Policy.

* * * * *

(d)(1) * * *

(vi) Non-ozone-depleting substances, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons (subpart 23.8).

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 6. Amend section 23.000 by revising paragraph (d) to read as follows:

23.000 Scope.

* * * * *

(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable (including EPEAT®-registered, and non-toxic and less toxic) products, products containing recovered materials, biobased products, non-ozone-depleting products, and products and services that minimize or eliminate, when feasible, the use, release, or emission of high global warming potential hydrofluorocarbons, such as by using reclaimed instead of virgin hydrofluorocarbons;

* * * * *

■ 7. Revise the heading of subpart 23.8 to read as follows:

Subpart 23.8—Ozone-Depleting Substances and Hydrofluorocarbons

■ 8. Revise section 23.800 to read as follows:

23.800 Scope of subpart.

This subpart sets forth policies and procedures for the acquisition of items that—

(a) Contain, use, or are manufactured with ozone-depleting substances; or

(b) Contain or use high global warming potential hydrofluorocarbons.

■ 9. Revise section 23.801 to read as follows:

23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Section 706 of division D, title VII of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(c) Executive Order 13693 of March 25, 2015, Planning for Federal Sustainability in the Next Decade.

(d) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

23.802 [Removed]

■ 10. Remove section 23.802.

23.803 [Redesignated as 23.802 and Amended]

■ 11. Redesignate section 23.803 as 23.802 and revise newly redesignated 23.802 to read as follows:

23.802 Policy.

It is the policy of the Federal Government that Federal agencies—

(a) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone and/or result in the use, release or emission of high global warming potential hydrofluorocarbons; and

(b) Give preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by minimizing—

(1) The depletion of ozone in the upper atmosphere; and

(2) The potential use, release, or emission of high global warming potential hydrofluorocarbons.

■ 12. Add new section 23.803 to read as follows:

23.803 Procedures.

In preparing specifications and purchase descriptions, and in the acquisition of products and services, agencies shall—

(a) Comply with the requirements of title VI of the Clean Air Act, section 706 of division D, title VII of Public Law 111–8, Executive Order 13693, and 40 CFR 82.84(a)(2), (3), (4), and (5);

(b) Substitute acceptable alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(n);

(c) Unless a particular contract requires otherwise, specify that, when feasible, contractors shall use another acceptable alternative in lieu of a high global warming potential hydrofluorocarbon in products and services in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential; and

(d) Refer to EPA's SNAP program for the list of alternatives, found at 40 CFR part 82, subpart G, as well as supplemental tables of alternatives (available at *http://www.epa.gov/snap*).

■ 13. Revise section 23.804 to read as follows:

23.804 Contract clauses.

Except for contracts for supplies that will be delivered outside the United States and its outlying areas, or contracts for services that will be performed outside the United States and its outlying areas, insert the following clauses:

(a) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons, in solicitations and contracts for—

(1) Refrigeration equipment (in product or service code (PSC) 4110);

(2) Air conditioning equipment (PSC 4120);

(3) Clean agent fire suppression systems/equipment (*e.g.*, installed room flooding systems, portable fire extinguishers, aircraft/tactical vehicle fire/explosion suppression systems) (in PSC 4210);

(4) Bulk refrigerants and fire suppressants (in PSC 6830);

(5) Solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 6850);

(6) Corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 8030);

(7) Fluorocarbon lubricants (primarily aerosols) (in PSC 9150); and

(8) Any other manufactured end products that may contain or be manufactured with ozone-depleting substances.

(b) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners, in solicitations and contracts that include the maintenance, service, repair, or disposal of—

(1) Refrigeration equipment, such as refrigerators, chillers, or freezers; or

(2) Air conditioners, including air conditioning systems in motor vehicles.

(c) 52.223–20, Aerosols, in solicitations and contracts—

(1) For products that may contain high global warming potential hydrofluorocarbons as a propellant, or as a solvent; or

(2) That involve maintenance or repair of electronic or mechanical devices.

(d) 52.223–21, Foams, in solicitations and contracts for—

(1) Products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent, such as building foam insulation or appliance foam insulation; or

(2) Construction of buildings or facilities.

PART 25—FOREIGN ACQUISITION

25.1101 [Amended]

■ 14. Amend section 25.1101 by removing from paragraph (f) ", as defined in the provision at 52.225–18".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (b)—

■ i. Redesignating paragraphs (b)(36) through (54) as paragraphs (b)(38) through (56), respectively;

■ ii. Adding new paragraphs (b)(36) and (37);

■ iii. Further redesignating newly redesignated paragraphs (b)(43) through (56) as paragraphs (b)(45) through (58), respectively; and

■ iv. Adding new paragraphs (b)(43) and (44).

The revision and additions reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (June, 2016)

* * * * *

(b) * * *

____(36) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016) (E.O. 13693).

____(37) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016) (E.O. 13693).

* * * * *

____(43) 52.223–20, Aerosols (June, 2016) (E.O. 13693).

____(44) 52.223–21, Foams (June, 2016) (E.O. 13693).

* * * * *

■ 16. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (b)(1)—

■ i. Redesignating paragraphs (b)(1)(xi) through (xvi) as (b)(1)(xiii) through (xviii), respectively;

■ ii. Adding new paragraphs (b)(1)(xi) and (xii);

■ iii. Further redesignating newly redesignated paragraphs (b)(1)(xiv) through (xviii) as paragraphs (b)(1)(xvi) through (xx), respectively; and

■ iv. Adding new paragraphs (b)(1)(xiv) and (xv).

The revision and additions read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (June, 2016)

* * * * *

(b) * * *

(1) * * *

(xi) 52.223–11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016)

(E.O. 13693)(applies to contracts for products as prescribed at FAR 23.804(a)).

(xii) 52.223–12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016) (E.O. 13693) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

* * * * *

(xiv) 52.223–20, Aerosols (June, 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices).

(xv) 52.223–21, Foams (June, 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities.

* * * * *

■ 17. Amend section 52.223–11 by revising the section heading, clause heading, and clause to read as follows:

52.223–11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.

* * * * *

Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016)

(a) *Definitions.* As used in this clause—

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (*http://www.epa.gov/snap/*).

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning: Contains (or manufactured with, if applicable) *_______, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(c) *Reporting.* For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by—

(i) Type of hydrofluorocarbon (*e.g.,* HFC–134a, HFC–125, R–410A, R–404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to *www.sam.gov,* for FY17 and after—

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at *http://www.epa.gov/snap*) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap.*

(End of clause)

■ 18. Amend section 52.223–12 by revising the section heading, clause heading, and clause to read as follows:

52.223–12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners.

* * * * *

Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016)

(a) *Definitions.* As used in this clause—

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (*http://www.epa.gov/snap/*).

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) The Contractor shall comply with the applicable requirements of sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(c) Unless otherwise specified in the contract, the Contractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this contract by—

(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service and as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be maintained, serviced, repaired, or disposed under this contract, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this contract by—

(i) Type of hydrofluorocarbon (*e.g.,* HFC–134a, HFC–125, R–410A, R–404A, *etc.*);

(ii) Contract number;

(iii) Equipment/appliance; and

(2) Report that information to the Contracting Officer for FY16 and to *www.sam.gov,* for FY17 and after—

(i) No later than November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(e) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap/.*

(End of clause)

■ 19. Add section 52.223–20 to read as follows:

52.223–20 Aerosols.

As prescribed in 23.804(c), insert the following clause:

Aerosols (June, 2016)

(a) *Definitions.* As used in this clause—

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap/*).

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, or emissions of high global warming potential hydrofluorocarbons, when feasible, from aerosol propellants or solvents under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

(1) In-use emission rates, energy efficiency;

(2) Safety, such as flammability or toxicity;

(3) Ability to meet technical performance requirements; and

(4) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap/*.

(End of clause)

■ 20. Add section 52.223–21 to read as follows:

52.223–21 Foams.

As prescribed in 23.804(d), insert the following clause:

Foams (June, 2016)

(a) *Definitions.* As used in this clause—

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at *http://www.epa.gov/snap/*.

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, and emissions of high global warming potential hydrofluorocarbons and refrigerant blends containing hydrofluorocarbons, when feasible, from foam blowing agents, under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

(1) In-use emission rates, energy efficiency, and safety;

(2) Ability to meet performance requirements; and

(3) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at *http://www.epa.gov/snap/*.

(End of clause)

[FR Doc. 2016–10998 Filed 5–13–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 13, 18, and 19

[FAC 2005–88; FAR Case 2015–020; Item II; Docket No. 2015–0020; Sequence No. 1]

RIN 9000–AN09

Federal Acquisition Regulation: Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of U.S. Code which establishes a higher simplified acquisition threshold for overseas acquisitions in support of humanitarian or peacekeeping operations.

DATES: Effective June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2015–020.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 60832 on October 8, 2015, soliciting public comments on this rule, drafted to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. FAR Case 2003–022 was published in the **Federal Register** as an interim rule at 69 FR 8312, on February 23, 2004, and as a final rule published at 69 FR 76350, on December 20, 2004. Drafters of that rule had revised the definition for SAT contained at FAR 2.101: Definitions, but had also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. The civilian statute at the time was numbered 41 U.S.C. 259(d)(1); it is now at 41 U.S.C. 153. The purpose of this rule is to reinstate the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Conforming changes are made in FAR parts 4, 13, 18, and 19.

One public comment was received.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in development of the final rule.

A. Summary of Significant Changes

There were no changes made to the rule as a result of the comment received. There were no comments on the Initial Regulatory Flexibility Analysis.

B. Analysis of Public Comments

Comment: One respondent stated that the FAR definition of simplified acquisition needed to clarify that construction is included as part of supplies or services in a contingency environment, noting that construction projects are very important to contingency operations. The respondent indicated that contracting professionals generally understand that the FAR covers two broad categories of acquisition: Supplies and services. Services include everything that is not a commodity (supplies), and is therefore inclusive of construction, which is a type of service.

Response: The Councils appreciate the comment and acknowledge the broad understanding that services are inclusive of construction services.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory

Flexibility Act 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

> The final rule, in order to implement 41 U.S.C. 153, sets forth a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations.
>
> There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.
>
> The rule applies only to overseas acquisitions in support of humanitarian or peacekeeping operations. In Fiscal Year 2014, 1545 awards were made in support of humanitarian or peacekeeping operations, and 585 (37.86 percent) of those were to small businesses. Additionally, only 81 (5.24 percent) of the awards were valued between the former threshold of $150,000 and the new threshold of $300,000. Therefore, it is not anticipated that this rule will have a significant economic impact on small businesses.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 4, 13, 18, and 19

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 2, 4, 13, 18, and 19 as set forth below:

■ 1. The authority citation for FAR parts 2, 4, 13, 18, and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by revising the definition "Simplified acquisition threshold" to read as follows:

2.101 Definitions.

* * * * *

Simplified acquisition threshold means $150,000, except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 1903), the term means—

(i) $300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) $1 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means $300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.1102 [Amended]

■ 3. Amend section 4.1102 by removing from paragraph (a)(3)(i) "peacekeeping operations as defined in 10 U.S.C. 2302(7)" and adding "peacekeeping operations as defined in 10 U.S.C. 2302(8)" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.003 [Amended]

■ 4. Amend section 13.003 by removing from paragraph (b)(1) "described in paragraph (1)" and adding "described in paragraph (1)(i)" in its place.

PART 18—EMERGENCY ACQUISITIONS

18.204 [Redesignated as 18.205]

■ 5. Redesignate section 18.204 as section 18.205.

■ 6. Add a new section 18.204 to read as follows:

18.204 Humanitarian or peacekeeping operation.

(a) A humanitarian or peacekeeping operation is defined in 2.101.

(b) *Simplified acquisition threshold.* The threshold increases when the head of the agency determines the supplies or services are to be used to support a humanitarian or peacekeeping operation. (See 2.101.)

PART 19—SMALL BUSINESS PROGRAMS

19.203 [Amended]

■ 7. Amend section 19.203 by removing from paragraph (b) "described in paragraph (1)" and adding "described in paragraph (1)(i)" in its place.

19.502–2 [Amended]

■ 8. Amend section 19.502–2 by removing from paragraph (a) "paragraph (1) of the Simplified Acquisition Threshold" and adding "paragraph (1)(i) of the simplified acquisition threshold" in its place.

[FR Doc. 2016–10999 Filed 5–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 7, 12, and 52

[FAC 2005–88; FAR Case 2011–020; Item III; Docket No. 2011–0020, Sequence No. 1]

RIN 9000–AM19

Federal Acquisition Regulation; Basic Safeguarding of Contractor Information Systems

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add a new subpart and contract clause for the basic safeguarding of contractor information systems that process, store or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding Controlled Unclassified Information (CUI) as established by Executive Order (E.O.). Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2011–020.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule has basic safeguarding measures that are generally employed as part of the routine course of doing business. DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 77 FR 51496 on August 24, 2012, to address the safeguarding of contractor information systems that contain or process information provided by or generated for the Government (other than public information). This proposed rule had been preceded by DoD publication of an Advance Notice of Proposed Rulemaking (ANPR) and notice of public meeting in the **Federal Register** at 75 FR 9563 on March 3, 2010, under Defense Federal Acquisition Regulation Supplement (DFARS) Case 2008–D028, Safeguarding Unclassified Information. The ANPR addressed basic and enhanced safeguarding procedures for the protection of DoD unclassified information. Resulting public comments on the DFARS rule were considered in drafting a proposed FAR rule under FAR case 2009–030, which focused on the basic safeguarding of unclassified Federal information contained within information systems. On June 29, 2011, the contents of FAR case 2009–030 were merged into FAR case 2011–020, Basic Safeguarding of Contractor Information Systems.

This rule, which focuses on ensuring a basic level of safeguarding for any contractor system with Federal information, reflective of actions a prudent business person would employ, is just one step in a series of coordinated regulatory actions being taken or planned to strengthen protections of information systems. Last summer, OMB issued proposed guidance to enhance and clarify cybersecurity protections in Federal acquisitions related to CUI in systems that contractors operate on behalf of the Government as well as in systems that are not operated on behalf of an agency but are used incidental to providing a product or service for an agency with particular focus on security controls, incident reporting, information system assessments, and information security continuous monitoring. DOD, GSA, and NASA will be developing FAR changes to implement the OMB guidance when it is finalized.

In addition, we plan to develop regulatory changes for the FAR in coordination with National Archives and Records Administration (NARA) which is separately finalizing a rule to implement E.O. 13556 addressing CUI. The E.O. established the CUI program to standardize the way the executive branch handles information (other than classified information) that requires safeguarding or dissemination controls.

All of these actions should help, among other things, clarify the application of the Federal Information Security Management Act (FISMA) and the National Institute of Standards and Technology (NIST) information systems requirements to contractors and, by doing so, help to create greater consistency, where appropriate, in safeguarding practices across agencies. Prior to all of these actions occurring, DOD has updated a DFARS rule addressing enhanced safeguarding for certain sensitive DOD information in those systems.

Sixteen respondents submitted comments on this proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

1. Safeguarding of Covered Contractor Information System

- Provides for safeguarding the contractor information system, rather than specific information contained in the system.
- Revises the title of the case and throughout the final rule to add the term "covered" to "contractor information system," thus indicating that the policy applies only to contractor information systems that contain Federal contract information.

2. Safeguarding Requirements

- Deletes the safeguarding requirements and procedures in the clause that relate to transmitting electronic information, transmitting voice and fax information, and information transfer limitations.
- Replaces the other safeguarding requirements with comparable security requirements from NIST SP 800–171.

3. Definitions

- Adds definitions of "covered contractor information system" and "Federal contract information."
- Deletes definitions of "public information" and all other proposed definitions in the clause, except "information," "information system," and "safeguarding."

4. Applicability

Makes the final rule—

- Applicable below the simplified acquisition threshold.
- Not applicable to the acquisition of commercially available off-the-shelf (COTS) items.

5. Other Safeguarding Requirements

Clarifies that the clause does not relieve the contractor from complying with any other specific safeguarding requirements and procedures specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal requirements for safeguarding CUI as established by E.O. 13556.

B. Analysis of Public Comments

1. Scope and Applicability

a. Information Provided by or Generated for the Government (Other Than Public Information)

Comments: About half the respondents commented on the scope and applicability of the proposed rule, which required safeguarding of information provided by or generated for the Government (other than public information). The proposed rule included the statutory definition of "public information" from 44 U.S.C. 3502. The respondents generally commented on the breadth of the scope or a lack of clarity.

One respondent urged the FAR Council to withhold release of a final rule until NARA implements E.O. 13556, Controlled Unclassified Information. Without such coordination, contractors may be required to establish conflicting protections that may later conflict or be revised by the Governmentwide NARA program.

Several respondents were also concerned about the broad potential scope of the information subject to these requirements. One respondent stated that the rule would cover nearly all information and all information systems of any company that holds even a single Government contract. One respondent questioned whether "generated for the Government" just applied to information that is part of a contract deliverable, or whether it also covered information about the contractor's own proprietary practices that is submitted to the Government. Another respondent was concerned that agencies have tended to broadly expand FISMA requirements to information developed under Federal contracts, regardless of whether the information is a deliverable under the contract (*e.g.,* data exchanged among researchers). One respondent recommended limiting the covered information to "information provided by or delivered to the Government." Another respondent urged narrowing the rule to the type of information for which safeguards are warranted, based on a reasoned risk assessment and cost-benefit analysis. One respondent recommended that the rule should exclude contractor proprietary or trade secret data from the scope of information generated for the Government, so that the responsibility for protecting such information remains with the contractor.

One respondent is concerned that the Government may send non-public information to a recipient, who may be unaware that it is in their possession on any device, in any form. The information could be temporarily exposed, even if transferred and not retained.

Further, respondents were concerned about interpretation of the definition of "public information." Several respondents considered that the definition of "public information" was too narrow, because it requires the actual disclosure, dissemination, or disposition of information. One respondent stated that the Government has significant volumes of data that have not yet been made public, but that may be subject to obligations for disclosure under a variety of statutes. Several respondents stated that contractors cannot readily determine what information is categorized as public information, because it is almost impossible for contractors to keep track of what information has been released to the public.

One respondent stated that the Government should proactively mark protected materials.

Response: The intent is that the scope and applicability of this rule be very broad, because this rule requires only the most basic level of safeguarding. However, applicability of the final rule is limited to covered contractor information systems, *i.e.,* systems that are owned or operated by a contractor that process, store, or transmit Federal contract information. "Federal contract information" means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments. The final rule has been coordinated with NARA. The focus of the final rule is shifted from the safeguarding of specific information to the basic safeguarding of certain contractor information systems. Therefore, it is not necessary to draw a fine line as to what information was "generated for the Government," when the information is received, or whether the information is marked. The requirements pertain to the information system itself. The type of analysis required to narrow the rule to the type of information for which safeguards are warranted, based on risk-assessment and cost-benefit analysis, is appropriate for CUI and the enhanced safeguarding that would be required for such information consistent with law, Federal regulation, and Governmentwide policy. A prudent business person would employ this most basic level of safeguarding, even if not covered by this rule. This rule is intended to provide a basic set of protections for all Federal contract information, upon which other rules, such as a forthcoming FAR rule to protect CUI, may build.

Since the safeguarding applies to the contractor information system, not to specific information within the system, it is irrelevant whether there is also contractor information in the system. However, if the contractor stores pre-existing proprietary data or trade secrets in a separate information system, the contractor can decide how to protect its own information.

The definition of "public information" has been deleted, as it is no longer necessary.

b. Information Residing in or Transiting Through a Contractor Information System

Comment: One respondent requested clarification of the statutory definition of "information system," *i.e.,* what would be the limitation for a system interfacing with another system. The respondent requested that the rule specifically identify the medium of communication, the mechanism for delivering the communication, and the disposition.

Response: Generally, separately accredited information systems that interface through loosely coupled mechanisms, such as email or Web services, are not considered direct connections, even if they involve dynamic interaction between software systems in different organizations that are designed to interact with each other (*e.g.,* messaging, electronic commerce/electronic data interchange transactions). It would not be practical to specify all the possible mechanisms for interaction among systems, since they are constantly evolving.

Comment: Another respondent requested a definition of "resides on or transits through" an information system. The respondent is concerned that much of the focus of information security efforts is directed at protecting perimeter devices and may overlook the necessity of protecting the host servers.

Response: Information "residing on" a system means information being processed by or stored on the information system. "Transiting through" the system means simple transport of the data through the system to another destination (*i.e.,* no local storage or processing). All of the controls listed are focused on protection of the information system (*e.g.,* the host servers, workstations, routers). None of the controls are devoted to protection of "perimeter devices" although several (particularly paragraphs (b)(1)(x) and (xi)) are applied at the perimeter of the system.

c. Solicitations

Comment: One respondent was concerned that the requirements of the rule were applied to solicitations, thus imposing this requirement as a barrier to even bidding on Government work. Another respondent commented that the FAR rule would affect not only companies that receive Government contracts, but also companies soliciting Government contracts.

Response: This was not the intent of the proposed rule. The final rule has revised the applicability section to address "acquisitions" rather than "solicitations and contracts." Of course, the clause prescription still requires inclusion of the clause in solicitations, so that offerors are aware of the clause that will be included in the resultant contract. The clause does not take effect until the offeror is awarded a contract containing the clause.

d. Fundamental Research

Comment: Two respondents requested exclusion of contracts for fundamental research from the requirements of the rule. One respondent noted that the prior proposed DFARS rule included an exception for solicitations and contracts for fundamental research, while also noting that most of the respondent's member institutions have at least first level information technology security measures in place within their systems, which appear to meet most of the basic safeguarding requirements. Another respondent, while recognizing that some level of protection should be afforded, seeks regulations that will provide an appropriate level of protection without creating unwieldy compliance burdens or creating a chilling effect on academic activity, including fundamental research.

Response: The final rule does not focus on the protection of any specific type of information, but requires basic elements for safeguarding an information system. These requirements should not have any chilling effect on fundamental research.

e. Policies and Procedures

Comment: One respondent stated that the scope statement that the subpart provides policies and procedures is inaccurate, because the subpart just defines terms and prescribes the use of a contract clause.

Response: The scope section has been deleted in the final rule.

2. Basic Safeguarding Requirements

a. General

Comment: According to one respondent, some of the safeguarding requirements are too basic and rudimentary to achieve the rule's intended purpose.

Response: The intended purpose of the rule is to provide basic safeguarding of covered contractor information systems. This rule is not related to any specific information categories other than the broad and basic safeguarding.

Comment: Various respondents were of the opinion that the rule should hold contractors to NIST and FISMA requirements.

- One respondent stated that the proposed rule severely downgrades existing recommendations in place by NIST regarding the proper procedures and controls for protection of Federal information systems. According to the respondent, the rule should require contractors to adhere to same standards required of Federal agencies by the NIST SP 800 x series and the FISMA.
- Another respondent noted that Federal agencies are required to adhere to information security standards and guidelines published by NIST in Federal Information Processing Standards (FIPS) and Special Publications (SP). These publications explicitly state that the same standards apply to outsourced external service providers. Agencies and their contractors are also required to implement the configuration control settings at a "bits and bytes" level contained in the security configuration control checklists found in the National Security Program (NSP), which is co-hosted by NIST and the Department of Homeland Security (DHS).

Response: This rule establishes the basic, minimal information system safeguarding standards which Federal agencies are already required to follow internally and most prudent businesses already follow as well. The rule makes clear that Federal contractors whose information systems process, store, or transmit Federal contract information must follow these basic safeguarding standards. When contractors will be processing CUI or higher-level sensitive information, additional safeguarding standards, not covered by this rule will apply.

Comment: One respondent stated that the requirements are not specific enough from a technological standpoint to encompass the current state of information security technology.

Response: The final rule replaces the requirements in the proposed rule with requirements from NIST guidelines (NIST SP 800–171), which are appropriate to the level of technology, and are updated as technology changes. Flexibility is provided for specific implementation.

Comment: Another respondent recommended that the Councils should consider adopting a performance standard for protecting specific types of information from unauthorized disclosure rather than the "design standard" in the proposed rule.

Response: The standards in the proposed rule and in the final rule are not design standards; they are performance standards.

Comment: One respondent requested clarification of the meaning of "safeguarding." According to the respondent, the definition of "safeguarding" neither refers to nor incorporates the definition of "information security." The respondent questions whether the rule intends to distinguish between information security and safeguarding.

Response: There is a basic distinction between "safeguarding" and "information security." "Safeguarding" is a verb and expresses required action and purpose. The term "safeguarding" is common in Executive orders relating to information systems. Although safeguarding has some commonality with "information security" the focus of information security is narrower. Safeguarding the contractor's information system will promote confidentiality and integrity of data, but is not specifically concerned with data availability.

Comment: One respondent recommended that the rule should just require the contractor to protect information provided to or generated for the Government "at a level no less than what the company provides for its own confidential and proprietary business information."

Response: There would be no need for a FAR clause if that is all it required. That would provide no advantage over the current status. FISMA requires this protection of Federal contract information.

b. Specific Requirements

i. Protecting Information on Public Computers or Web sites

Comment: One respondent commented on the requirement in the proposed rule (FAR 52.204–21(b)(1)) to protect information on public computers or Web sites. The respondent recommended focusing on covered contractor information systems. If retaining the term "public computers," the respondent recommended defining the term, taking into consideration that some contractors have a contractual obligation to use "public computers" in performance of a contract, and removing the restriction on the use of public computers if the use has implemented a secure means of accessing the covered Government information.

Response: The heading in the proposed rule in FAR paragraph 52.204–21(b)(1), "Protecting information on public computers or Web sites," misstated the intent of the requirement. The requirement was to not process information provided by the Government on public computers or Web sites. In the final rule, this heading has been removed and the requirement has been restated to be consistent with NIST 800–171.

ii. Transmitting Electronic Information

Comment: Many respondents commented on the requirement in the proposed rule (FAR 52.204–21(b)(2)) regarding transmitting electronic information. The primary concern of all of these respondents was the requirement for "the best level of security and privacy available given facilities, conditions, and environment." As one respondent stated, this is not consistent with the objective of the rule to require basic safeguarding, is not a defined term of art, and may not be consistent with the cost-effective standards and risk-based approach established by FISMA. Another respondent noted that requiring contractors to use the best level for all data, would prevent businesses from upgrading communications security for the transmission of more sensitive data. Another respondent pointed out that changes in technology would cause frequent changes in what would constitute the "best level." One respondent recommended replacing "best" with "adequate," or "commercially reasonable."

Response: After evaluating the public comments, the requirement regarding transmitting electronic information was removed from the coverage in the final rule because transmission of email, text messages, and blogs are outside the scope of the final rule, which deals with safeguards for the contractor's information system, not protection of information.

iii. Transmitting Voice and Fax Information

Comment: More than half the respondents commented on the requirement in the proposed rule (FAR 52.204–21(b)(3)) relating to transmitting voice and fax information. A primary concern of respondents was the requirement that covered information can be transmitted orally only when the sender has "reasonable assurance" that access is limited to authorized recipients. The respondents found this requirement to be too vague. According to one respondent, there is further concern that the term "voice information" could arguably apply to any oral communication, such as telephone conversations. One respondent recommended the adoption of strict, clear policies in securing the voice communications of contractor systems, including encryption requirements for all transmissions. One respondent questioned whether the rule covered voice communication over CDMA [code-division multiple access], GSM [Global System for Mobile], and VOIP [voice-over-Internet-Protocol], or some combination of the three.

Response: After evaluation of public comments, the requirement regarding transmission by phone and fax are outside the scope of the final rule, which deals with safeguards for the contractor's information system not protection of information.

iv. Physical and Electronic Barriers

Comment: Several respondents commented on the requirement in the proposed rule (FAR 52.204–21(b)(4)) regarding physical and electronic barriers to protect Federal contract information. There was general concern that for certain devices it would not be practicable to always have both a physical barrier and an electronic barrier, when not under direct individual control. One respondent was concerned that NIST does not mention the specific types of locks or keys that will provide acceptable protection. Another respondent questioned what "direct individual control" means. Another respondent was concerned about the potential need to protect the information itself, when in hard copy. One respondent considered that this requirement may philosophically conflict with Government and commercial efforts to create and accommodate a mobile workforce.

Response: The requirements at FAR 52.204–21(b)(4) in the proposed rule have been replaced by multiple security controls in paragraph (b)(1) of the clause 52.204–21. There is no longer a specific requirement to have both a physical barrier and an electronic barrier in all instances. The rule now clearly addresses the protection of the information system as a whole, rather than just the protection of the Federal contract information. The requirement for a basic level of safeguarding for covered contractor information systems is not in philosophical conflict with accommodation of a mobile work force. For example, it is common practice not to leave a smart phone with access to Federal contract information unattended in a public place and without any password protection.

v. Sanitization

Comment: One respondent commented on the requirement for data sanitization in the proposed rule (FAR 52.204–21(b)(5)). The respondent stated that the proposed rule did not adequately address data sanitization, because some media are unable to be cleared due to format or a lack of compatible equipment, and would require purging or destruction for proper sanitization. The respondent also noted that the URL for NIST 800–88 was incorrect.

Response: The requirement in the final rule is covered by paragraph (b)(1)(vii) of FAR 52.204–21, which includes destruction as a possible sanitization technique. The URL for NIST 800–88 is not included in the final rule.

vi. Intrusion Protection

Comment: Several respondents commented on the requirement for intrusion protection in the proposed rule (FAR 52.204–21(b)(6)).

- One respondent stated that the only proposed intrusion-protection safeguards relate to malware protection services and security-relevant software upgrades. According to the respondent, these types of safeguards are generally not considered sufficient to provide a reasonable level of protection in a sophisticated enterprise environment.
- One respondent recommended that if hardware reaches its end of life and is no longer supported by the manufacturer, there should be a clause imposing a 6 month to 1 year deadline to upgrade the security system.

Response: The proposed requirements for intrusion protection have been replaced with paragraphs (b)(1)(xii)–(xiv) of FAR 52.204–21 to provide basic intrusion protection. The recommendation for imposing a 6-month to 1-year deadline to upgrade the security system is outside the scope of this rule.

vii. Transfer Limitations

Comment: Various respondents commented on the transfer limitations in the proposed rule (FAR 52.204–21(b)(7)), which limited transfer of Federal contract information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause. The primary concern of the respondents was whether the prime contractors might be held responsible for reviewing or approving a subcontractor's safeguards.

Response: This requirement has been deleted. The final rule no longer focuses on the safeguarding of information, but of information systems. The requirement to flow the clause down to subcontractors accomplishes the objectives of the rule to require safeguarding of covered contractor information systems at all tiers.

c. Other Recommended Requirements

Comment: Some respondents recommended additional requirements for inclusion in the final rule:

- Training. One respondent recommended that contractor information security employees be required to obtain the same levels of certification and training as provided in the DOD 8570 guidelines. Another respondent recommended security awareness training, as required by 44 U.S.C. 3544(b)(4).
- Penetration or vulnerability testing, evaluation, and reporting. Several respondents recommended a requirement for periodic testing of the effectiveness of information security policies in accordance with 44 U.S.C. 3544(c).
- Detecting, reporting, and responding to security incidents. One respondent stated that under FISMA it is mandatory for contractors to report security incidents to law enforcement if Federal contract information is resident on or passing through the contractor information system. This respondent also expressed concern about how personally identifiable information (PII) notifications would be properly made, without reporting requirements.

- DFARS rule. One respondent recommended that this FAR rule should include procedures similar to those in the draft DFARS rule 2011–D039, Safeguarding Unclassified DoD Information.
- Encryption at rest. One respondent recommended that data be stored in an encrypted manner, rather than encrypting exclusively for the purpose of transit.
- Cyber security insurance. One respondent also recommended requiring Government contractors to carry insurance that specifically covers the protection of intangible property such as data. Another respondent thought that the rule would already require small businesses to maintain cyber liability insurance.

Response: This rule establishes minimum standards for contractors' information systems that process, store, or transmit Federal contract information where the sensitivity/impact level of the Federal contract information being protected does not warrant a level of protection necessitating training, penetration or vulnerability testing, evaluation, and reporting, detecting, reporting, and responding to security incidents, encryption at rest, or cybersecurity insurance. Such standards would be needed if contract performance involved the contractor accessing CUI or classified Federal information systems. The final rule under DFARS Case 2011–D039, retitled "Safeguarding Unclassified Controlled Technical Information" (published in the **Federal Register** at 78 FR 69273 on November 18, 2013), provided for enhanced levels of safeguarding because that case addressed a more sensitive level of information. Requiring cybersecurity insurance is outside the scope of this case.

d. Order of Precedence

Comment: One respondent commented on the order of precedence in the proposed rule at FAR 52.204–21(d), which stated that if any restrictions or authorizations in this clause are inconsistent with a requirement of any other such clause in the contract, the requirement of the other clause takes precedence over the requirements of this clause.

Response: The proposed paragraph at FAR 52.204–21(d) has been deleted from the final rule, and replaced by a new paragraph (b)(2). The basic safeguarding provisions should not conflict with any requirement for more stringent control if handling of more sensitive data is required. Paragraph (b)(2) of the FAR 52.204–21 clause states that there may be other safeguarding requirements for CUI.

e. Noncompliance Consequences

Comment: One respondent was concerned that any inadvertent release of information could be turned into not only an information security issue but also a potential breach of contract.

Response: The refocus of the final rule on the safeguarding requirements applicable to the system itself should allay the respondent's concerns. Generally, as long as the safeguards are in place, failure of the controls to adequately protect the information does not constitute a breach of contract.

3. Clause

a. Prescription

Comment: Several respondents commented on the prescription for use of clause 52.204–21.

- One respondent was concerned that it would be difficult to know when to use the clause because contracting officers have limited insight into offerors' existing information systems.
- One respondent recommended incorporating the clause into the list of clauses at FAR 52.212–5 instead of separately prescribing it at 12.301 for use in solicitations and contracts for the acquisition of commercial items.

Response: The clause is prescribed for inclusion in the solicitation when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system. This does not require any specific knowledge of the contractor's existing information system. Generally, the person drafting the contract requirements/statement of work would know if contract performance will involve Federal contract information residing in or transiting through its information system. The contracting officer may not have the technical expertise to make this determination.

It is not possible to include FAR clause 52.204–21 in 52.212–5 because the clause is not necessary to implement statute or E.O.

b. Flowdown

Comment: One respondent was concerned about the scope of the flowdown obligation, because it would be co-extensive with the definition of information. According to the respondent, the flowdown requirement would likely extend to all subcontracts for commercial items and COTS items, and even to small dollar value subcontracts.

Response: The clause only flows down to covered contractor information systems. The Councils have revised the final rule to exclude applicability to COTS items, at both the prime and subcontract level. However, there may be subcontracts for commercial items (especially services, *e.g.*, a consultant) at lower dollar values that would involve covered contractor information systems. In such instances, it is still necessary to apply basic safeguards to such covered contractor information system.

4. Acquisition Planning

Comment: One respondent was concerned that the acquisition planning requirement in the proposed rule at FAR 7.105(b)(18) could lead to varying security standards rather than uniform Governmentwide standards.

Response: The intent of the proposed requirement, which included a cross reference to the new subpart on basic safeguarding, was that the acquisition plan should address compliance with the requirements of the new subpart, not that each plan would invent a new set of requirements. The final rule has rewritten this requirement to make the requirement for compliance with FAR subpart 4.19 clearer.

5. Contract Administration Functions

Comment: One respondent commented on the requirement in the proposed rule (FAR 42.302(a)(21)) regarding the contract administration function to "ensure that the contractor has protective measures in place, consistent with the requirements of the clause at 52.204–21." The respondent noted that the term "protective measures" was not used in the clause.

Response: This requirement has been deleted from the final rule.

6. Impact of Rule

Comment: Various respondents were concerned with the general impact of the rule and, in particular, the impact of the rule on small business concerns. One respondent stated disagreement with the Government's assessment that the cost of implementing the rule would be insignificant because it requires first-level protective matters that are typically employed as part of the routine course of doing business.

Some respondents were concerned that the lack of clarity imposes significant risks of disputes, and increases costs, since a contractor must design to the most stringent standard in an attempt to assure compliance. For example, several respondents were concerned that the potentially broad definition of "information" would significantly increase the compliance burden for contractors. Another respondent noted that the vagueness and subjective nature of some of the requirements (*e.g.*, "best available" standard at 52.204–21(b)(2)) would place an incredible financial burden on businesses, creating an inequitable burden upon many small businesses.

Response: The final rule has been amended in response to the public comments (see section II.A. of this preamble), such that the particular requirements that were mentioned as imposing a greater burden have been clarified or deleted. As a result, the burden on all businesses, including small businesses, should not be significant.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

> This action is being implemented to revise the Federal Acquisition Regulation (FAR) to safeguard contractor information systems that process, store, or transmit Federal contract information. The objective of this rule is to require contractors to employ basic security measures, as identified in the clause, for any covered contractor information system.
>
> Various respondents were concerned with the general impact of the rule and, in particular, the impact of the rule on small business concerns. The final rule has been amended in response to the public comments, such that the particular requirements that were mentioned as imposing a greater burden have been clarified or deleted. As a result, the burden on all businesses, including small businesses, should not be significant.
>
> This final rule applies to all Federal contractors and appropriate subcontractors, including those below the simplified acquisition threshold, if the contractor has Federal contract information residing in or transiting through its information system. The final rule is not applicable to the acquisition of commercially available off-the-shelf (COTS) items. In FY 2013, the Federal Government awarded over 250,000 contracts to almost 40,000 unique small business concerns. Of those awards, about half were for commercial items awarded to about 25,000 unique small business concerns. It is not known what percentage of those awards were for COTS items.
>
> There are no reporting or recordkeeping requirements associated with the rule. The other compliance requirements will not have a significant cost impact, since these are the basic safeguarding measures (*e.g.*, updated virus protection, the latest security software patches, etc.). This final rule has basic safeguarding measures that are generally employed as part of the routine course of doing business. It is recognized that the cost of not using basic information technology system protection measures would be an enormous detriment to contractor and Government business, resulting in reduced system performance and the potential loss of valuable information. It is also recognized that prudent business practices to protect an information technology system are generally a common part of everyday operations. As a result, requiring basic safeguarding of contractor information systems, if Federal contract information resides in or transits through such systems, offers enormous value to contractors and the Government by reducing vulnerabilities to covered contractor information systems.
>
> There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities and still meet the objectives of the rule. DoD, GSA, and NASA considered excluding acquisitions below the simplified acquisition threshold, but rejected this alternative because there are many acquisitions below the simplified acquisition threshold where the Government nevertheless has a significant interest in requiring basic safeguarding of the contractor information system (*e.g.*, a consulting contract with an individual).
>
> This final rule does not apply to the acquisition of COTS items, because it is unlikely that acquisitions of COTS items will involve Federal contract information residing in or transiting through the contractor information system. Excluding acquisitions of COTS items reduces the number of small entities to which the rule will apply.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 7, 12, and 52

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 7, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 7, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

■ 2. Add subpart 4.19 to read as follows:

Subpart 4.19—Basic Safeguarding of Covered Contractor Information Systems

Sec.

4.1901 Definitions.
4.1902 Applicability.
4.1903 Contract clause.

Subpart 4.19—Basic Safeguarding of Covered Contractor Information Systems

4.1901 Definitions.

As used in this subpart—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as that on public Web sites) or simple transactional information, such as that necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

4.1902 Applicability.

This subpart applies to all acquisitions, including acquisitions of commercial items other than commercially available off-the-shelf items, when a contractor's information system may contain Federal contract information.

4.1903 Contract clause.

The contracting officer shall insert the clause at 52.204–21, Basic Safeguarding of Covered Contractor Information Systems, in solicitations and contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising paragraph (b)(18) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(18) *Security considerations.* (i) For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see subpart 4.4).

(ii) For information technology acquisitions, discuss how agency information security requirements will be met.

(iii) For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system, discuss how agency requirements for personal identity verification of contractors will be met (see subpart 4.13).

(iv) For acquisitions that may require Federal contract information to reside in or transit through contractor information systems, discuss compliance with subpart 4.19.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by redesignating paragraphs (d)(3) through (7) as paragraphs (d)(4) through (8) and adding a new paragraph (d)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the clause at 52.204–21, Basic Safeguarding of Covered Contractor Information Systems, in solicitations and contracts (except for acquisitions of COTS items), as prescribed in 4.1903.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 52.204–21 to read as follows:

52.204–21 Basic Safeguarding of Covered Contractor Information Systems.

As prescribed in 4.1903, insert the following clause:

Basic Safeguarding of Covered Contractor Information Systems (June, 2016)

(a) *Definitions.* As used in this clause—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) *Safeguarding requirements and procedures.* (1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (*i.e.,* information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

■ 6. Amend section 52.213–4 by—

■ a. Revising the date of the clause and paragraph (a)(2)(viii);

■ b. Redesignating paragraphs (b)(2)(i) through (iv) as paragraphs (b)(2)(ii) through (v); and

■ c. Adding a new paragraph (b)(2)(i).

The revisions and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items)

(June, 2016)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Items (June, 2016).

* * * * *

(b) * * *

(2) * * *

(i) 52.204–21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016) (Applies to contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

* * * * *

■ 7. Amend section 52.244–6 by—

■ a. Revising the date of the clause and in paragraph (a) the definition "Commercial item";

■ b. Redesignating paragraphs (c)(1)(iii) through (xiv) as paragraphs (c)(1)(iv) through (xv); and

■ c. Adding a new paragraph (c)(1)(iii).

The revisions and addition read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items

(June, 2016)

(a) * * *

Commercial item and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

* * * * *

(c)(1) * * *

(iii) 52.204–21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204–21.

* * * * *

[FR Doc. 2016–11001 Filed 5–13–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 36

[FAC 2005–88; FAR Case 2015–018; Item IV; Docket No. 2015–0018; Sequence No 1]

RIN 9000–AN10

Federal Acquisition Regulation; Improvement in Design-Build Construction Process

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 that requires the head of the contracting activity to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than $4 million.

DATES: *Effective:* June 15, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–88, FAR Case 2015–018.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 60833 on October 8, 2015, to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon NDAA for FY 2015, Public Law 113–291. Section 814 requires the head of the contracting activity, delegable to a level no lower than the senior contracting official, to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than $4 million. Five respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. One change was made to the rule as a result of those comments. A discussion of the comments is provided as follows:

Comment: One respondent requested that the maximum number of offerors allowed to submit phase-two proposals be limited to three of the most highly qualified offerors.

Response: The scope of this rule is limited to the implementation of Section 814 of the FY 2015 NDAA, which requires a higher approval authority when selecting more than five offerors to participate in Phase 2 of a design-build acquisition. Identifying the ideal number of contractors for participation in Phase 2 is beyond the scope of the case and the statute that is being implemented.

Comment: Two respondents recommended that the rule be revised to add a reporting requirement for those instances when more than five offerors are selected to submit phase-two proposals.

Response: The scope of this rule is limited to the implementation of Section 814 of the FY 2015 NDAA. Adding a public reporting requirement is beyond the scope of the case and the statute that is being implemented.

Comment: One respondent recommended that the rule be revised to include a requirement that the senior contracting official's approval be documented in the contract file.

Response: The requirement to document the contract file was in the proposed rule at FAR 36.303–1(a)(4). In civilian agencies, for paragraph (a)(4) of FAR section 36.303–1, the senior contracting official is the advocate for competition for the procuring activity, unless the agency designates a different position in agency procedures. The approval shall be documented in the contract file.

Comment: One respondent recommended that the FAR be revised to limit the use of single-step design-build procurements by requiring the use of two-step design-build procurement process for all design-build procurements above $4 million.

Response: The recommendation is beyond the scope of the case and the statute that is being implemented.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule implements section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. Section 814 is entitled Improvement in Defense Design-Build Construction Process. Section 814 requires the head of the contracting activity, delegable to a level no lower than the senior contracting official, to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than $4 million.

No comments were received by the public comments in response to the initial regulatory flexibility analysis. The number of design-build construction awards is not currently tracked by the Federal government's business systems. In Fiscal Year 2014, the Federal Government awarded 3,666 construction awards to 2,239 unique small business vendors. It is unknown what percentage of these contracts involved design-build construction services.

This rule does not impose new recordkeeping or reporting requirements. The new approval requirement for advancing more than five contractors to phase two of a two-phase design-build selection procedure only affects the internal operating procedures of the Government. For acquisitions valued over $4 million, the head of the contracting activity (HCA) is required to now make a determination that it is in the best interest of the Government to select more than five offerors to proceed to phase two. Any burden caused by this rule is expected to be minimal and will not be any greater on small businesses than it is on large businesses.

No alternative approaches were considered. The new approval requirement for advancing more than five contractors to phase two of a two-phase design-build selection procedure only affects the internal operating procedures of the Government. It is not anticipated that the proposed rule will have a significant economic impact on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 36

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 36 as set forth below:

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR part 36 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 36.303–1 by revising paragraph (a)(4) to read as follows:

36.303–1 Phase One.

(a) * * *

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified in the solicitation shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The contracting officer shall document this determination in the contract file. For acquisitions greater than $4 million, the determination shall be approved by the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity. In civilian agencies, for this paragraph (a)(4), the senior contracting official is the advocate for competition for the procuring activity, unless the agency designates a different position in agency procedures. The approval shall be documented in the contract file.

* * * * *

[FR Doc. 2016–11003 Filed 5–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 2005–88; Item V; Docket No. 2016–0052; Sequence No. 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective:* May 16, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Hada Flowers, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755. Please cite FAC 2005–88, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR part 1 this document makes editorial changes to the FAR.

List of Subject in 48 CFR Part 1

Government procurement.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 1 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 1 continues to read as follow:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by—

■ a. Removing FAR segment "3.4" and its corresponding OMB Control No. "9000–0003";

■ b. Removing from FAR segment 3.11, the OMB Control No. "9000–0181" and adding "9000–0183" in its place;

■ c. Removing from FAR segment 9.2, the OMB Control No. "9000–0020" and adding "9000–0083" in its place;

■ d. Removing FAR segment “14.214” and its corresponding OMB Control No. “9000–0105”;

■ e. Adding in numerical sequence, FAR segment “22.5” and its corresponding OMB Control No. “9000–0175”;

■ f. Removing from FAR segment 22.16, the OMB Control No. “1215–0209” and adding “1245–0004” in its place;

■ g. Removing FAR segment “32” and its corresponding OMB Control No. “9000–0035”;

■ h. Adding in numerical sequence, FAR segment “42.15” and its corresponding OMB Control No. “9000–0142”;

■ i. Adding in numerical sequence, FAR segments “44.305” and “52.244–2(i)” and their corresponding OMB Control No. “9000–0132”;

■ j. Removing from FAR segment 52.203–16, the OMB Control No. “9000–0181” and adding “9000–0183” in its place;

■ k. Adding in numerical sequence, FAR segments “52.207–4”, “52.209–1”, “52.209–2”, “52.209–5”, “52.209–6”, “52.211–7”, “52.212–3(h)”, and “52.212–5”, and their corresponding OMB Control Nos., “9000–0082”, “9000–0083”, “9000–0190”, “9000–0094”, “9000–0094”, “9000–0153”, “9000–0094”, and “9000–0034”, respectively;

■ l. Removing from FAR segment 52.222–4, the OMB Control No. “1215–0119” and adding “1235–0023” in its place;

■ m. Removing from FAR segment 52.222–6, the OMB Control No. “1215–0140” and adding “1235–0023” in its place;

■ n. Removing FAR segment “55.222–17” and its corresponding OMB Control Nos. “1235–0007 and 1235–0025”;

■ o. Adding in numerical sequence, FAR segment “52.222–17” and its corresponding OMB Control Nos. “1235–0007 and 1235–0025”;

■ p. Removing from FAR segment 52.222–18, the OMB Control No. “9000–0127” and adding “9000–0155” in its place;

■ q. Removing from FAR segment 52.222–40, the OMB Control No. “1215–0209” and adding “1245–0004” in its place;

■ r. Adding in numerical sequence, FAR segments “52.222–54” and “52.223–7”, and their corresponding OMB Control Nos. “1615–0092” and “9000–0107”, respectively;

■ s. Removing from FAR segment 52.225–4, the OMB Control No. “9000–0130” and adding “9000–0024” in its place;

■ t. Removing from FAR segment 52.225–6, the OMB Control No. “9000–0025” and adding “9000–0024” in its place;

■ u. Removing from FAR segment 52.225–9, the OMB Control No. “9000–0141” and adding “9000–0024” in its place;

■ v. Adding in numerical sequence, FAR segment “52.225–10” and its corresponding OMB Control No. “9000–0024”;

■ w. Removing from FAR segment 52.225–11, the OMB Control No. “9000–0141” and adding “9000–0024” in its place;

■ x. Adding in numerical sequence, FAR segment “52.225–12” and its corresponding OMB Control No. “9000–0024”;

■ y. Removing from FAR segment 52.225–21, the OMB Control No. “9000–0141” and adding “9000–0024” in its place;

■ z. Removing from FAR segment 52.225–23, the OMB Control No. “9000–0141” and adding “9000–0024” in its place;

■ aa. Adding in numerical sequence, FAR segment “52.225–26” and its corresponding OMB Control No. “9000–0184”;

■ bb. Adding in numerical sequence, FAR segments “52.227–11” and “52.227–13”, and their corresponding OMB Control No. “9000–0095”;

■ cc. Removing from FAR segment 52.232–5, the OMB Control No. “9000–0070” and adding “9000–0102” in its place;

■ dd. Adding in numerical sequence, FAR segments “52.232–33” and “52.232–34” and their corresponding OMB Control No. “9000–0144”;

■ ee. Removing FAR segment “52.233–7” and its corresponding OMB Control No. “9000–0117”;

■ ff. Removing from FAR segment 52.236–13, the OMB Control No. “1220–0029 and”;

■ gg. Adding in numerical sequence, FAR segments “52.237–10” and “52.242–13” and their corresponding OMB Control Nos. “9000–0152” and “9000–0108”, respectively;

■ hh. Removing FAR segment “52.246–10” and its corresponding OMB Control No. “9000–0077”;

■ ii. Adding in numerical sequence, FAR segments “52.247–6” and “52.247–52” and their corresponding OMB Control No. “9000–0061”;

■ jj. Removing FAR segment “52.249–11” and its corresponding OMB Control No. “9000–0028”;

■ kk. Adding in numerical sequence, FAR segment “52.251–2” and its corresponding OMB Control No. “9000–0032”; and

■ ll. Adding in numerical sequence, FAR segments “SF 294” and “SF 295” and their corresponding OMB Control Nos. “9000–0006” and “9000–0007”, respectively.

[FR Doc. 2016–11004 Filed 5–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–88; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–88, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–88, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

DATES: May 16, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–88 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC

Item	Subject	FAR Case	Analyst
*I	High Global Warming Potential Hydrofluorocarbons	2014–026	Gray.
*II	Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations.	2015–020	Francis.
*III	Basic Safeguarding of Contractor Information Systems	2011–020	Davis.
*IV	Improvement in Design-Build Construction Process	2015–018	Glover.
*V	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–88 amends the FAR as follows:

Item I—High Global Warming Potential Hydrofluorocarbons (FAR Case 2014–026)

This final rule implements Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential-hydrofluorocarbons (HFCs). The rule also requires contractors to report annually the amount of HFCs contained in equipment delivered to the Government or added or taken out of Government equipment under service contracts. This will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order 13693 on Planning for Sustainability in the Next Decade. This rule applies to small entities because about three-quarters of the affected contractors are small businesses and precluding them would undermine the overall intent of this policy. However, to minimize the impact this rule could have on all businesses, especially small businesses, this rule only requires tracking and reporting on equipment that normally contain 50 or more pounds of HFCs. In addition, this rule does not impose a labeling requirement for products that contain or are manufactured with HFCs, unlike the labeling requirement that is required by statute for ozone-depleting substances.

Item II—Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations (FAR Case 2015–020)

This final rule amends the FAR to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. When FAR Case 2003–022 was published as a rule in 2004, the definition for SAT at FAR 2.101 was changed, but the drafters of the rule also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. This rule reinstates the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Accordingly, this rule provides contracting officers with more flexibility when contracting in support of overseas humanitarian or peacekeeping operations. This final rule does not place any new requirements on small entities.

Item III—Basic Safeguarding of Contractor Information Systems (FAR Case 2011–020)

This final rule amends the FAR to add a new FAR subpart 4.19 and contract clause 52.204–21 for the basic safeguarding of covered contractor information systems, *i.e.,* that process, store, or transmit Federal contract information. The clause does not relieve the contractor of any other specific safeguarding requirement specified by Federal agencies and departments as it relates to covered contractor information systems generally or other Federal requirements for safeguarding controlled unclassified information (CUI) as established by Executive Order 13556. Systems that contain classified information, or CUI such as personally identifiable information, require more than the basic level of protection. This rule will not have a significant economic impact on contractors (including small business concerns) or the Government.

Item IV—Improvement in Design-Build Construction Process (FAR Case 2015–018)

This final rule revises the FAR to implement section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. When a two-phase design-build construction acquisition is valued at greater than $4 million, section 814 requires the head of the contracting activity to approve a contracting officer determination to select more than five offerors to submit phase-two proposals. The approval level is delegable no lower than the senior contracting official within the contracting activity. This rule change does not place any new requirements on small entities.

Item V—Technical Amendments

Editorial changes are made at FAR 1.106.

Dated: May 5, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–11005 Filed 5–13–16; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 9 and 721
Significant New Use Rules on Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2015–0810; FRL–9944–77]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 55 chemical substances which were the subject of premanufacture notices (PMNs). Ten of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 55 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on July 15, 2016. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 31, 2016.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before June 15, 2016 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before June 15, 2016, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0810, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *Moss.Kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import), process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (FRL–3658–5). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 55 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 55 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or the basis for the TSCA non-section 5(e) SNURs (*i.e.,* SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 10 PMN substances (P–11–150, P–11–484, P–11–543, P–14–67, P–15–59, P–15–60, P–15–104, P–15–154, P–15–328, and P–15–502) that are subject to "risk-based" consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called "TSCA section 5(e) SNURs" on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The TSCA section 5(e) SNURs designate as a "significant new use" the absence of the protective measures required in the corresponding consent orders.

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) consent order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) consent orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELs approach for SNURs are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) consent order for the same chemical substance.

This rule also includes SNURs on 45 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." These so-called "TSCA non-section 5(e) SNURs" are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a "significant new use" in all TSCA non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), *i.e.,* these significant new use activities are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

PMN Number P–11–150

Chemical name: Alkali transition metal oxide (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: April 14, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a battery material. Based on test data on the PMN substance and structural activity relationship (SAR) analysis of test data on analogous respirable, poorly soluble particulates, subcategory titanium dioxide, EPA identified concerns for lung, blood, kidney, and adrenal toxicity, neurotoxicity, developmental toxicity, developmental neurotoxicity, cardiovascular and gastrointestinal effects, and immunosuppression. The Order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the consent order requires:

1. Hazard communication. Establishment and use of a hazard communication program, including human health precautionary statements on each label and the Material Safety Data Sheet (MSDS).

2. Use of personal protective equipment including a National Institute of Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 10 or compliance with a New Chemicals Exposure Limit (NCEL) of 2.4 milligrams/cubic meter (mg/m^3) as an 8-hour time-weighted average, when there is potential inhalation exposure.

3. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the consent order of the PMN substance.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with special attention to histopathology (inflammation and cell proliferation) of the lung tissues and various parameters of the bronchoalveolar lavage fluid (BALF) *e.g.*, maker enzyme activities, total protein content, total cell count, cell differential, and cell viability. It is not necessary to look at internal organs. EPA recommends that a recovery period of 60 days be included to assess the progression or regression of any lesions would help characterize possible health effects of the substance. The submitter has agreed to complete this testing by the confidential aggregate production volume identified in the consent order. In addition, EPA has determined that the results of a carcinogenicity test (OPPTS Test Guideline 870.4200) would help characterize the potential human health effects of the PMN substance. The Order does not require this test at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10875.

PMN Numbers P–11–484 and P–11–543

Chemical names: Perfluoroalkyl substituted alkyl sulfonate (generic) (P–11–484); and Polyfluorinated alkyl quaternary ammonium chloride (generic) (P–11–543).

CAS numbers: Claimed confidential.

Effective date of TSCA section 5(e) consent order: October 30, 2014.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the substances will be as surfactants. Based on physical chemical properties data, as well as test data on analogous perfluorinated chemicals and potential perfluorinated degradation products including perfluorooctanoic acid (PFOA), perfluorooctanesulfonate (PFOS), perfluorohexane sulfonate (PFHS), and 1H,1H,2H,2H-perfluorooctanesulfonic acid (6–2 FTSA), EPA identified concerns for irritation to skin, eyes, lungs, mucous membranes, lung toxicity, liver toxicity, blood toxicity, male reproductive toxicity, immunosupression, and oncogenicity. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. Further, based on test data on P–11–484, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2,800 and 1 part per billion (ppb) respectively for PMN substances P–11–484 and P–11–543 respectively in surface waters. The Order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these exposures and risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into an MSDS, within 90 days.

2. Submission of certain physical/chemical property, human health and environmental toxicity, and environmental fate testing prior to exceeding the confidential production volume limits specified in the consent order.

3. Recording and reporting of certain fluorinated impurities in the starting raw material; and manufacture of the PMN substances not to exceed the maximum established impurity levels of certain fluorinated impurities.

4. Use of the PMN substances only for the confidential uses specified in the consent order, where use in consumer products that could be spray applied are prohibited.

5. Disposal of the PMN substance according to the incineration conditions specified in the consent order.

6. Comply with the release to water provisions specified in the consent order.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain environmental fate and human health and environmental toxicity testing would help characterize human health and environmental effects of the PMN substances. The submitter has agreed to conduct the testing identified in the consent agreement by the confidential triggers identified in the consent order. Further, EPA has determined that the results of an acute inhalation toxicity test (OPPTS Test Guideline 870.1300) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with a post-exposure observation period of up to 3 months and BALF analysis would help characterize the human health effects from spray application of the PMN substances. The Order does not require this testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10876 (P–11–484) and 40 CFR 721.10877 (P–11–543).

PMN Number P–14–67

Chemical name: Polyfluorinatedalkylsulfonyl substituted alkane derivative (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: November 4, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a polymer additive. EPA has concerns for potential incineration or other decomposition products of the PMN substance. These fluorinated decomposition products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers which suggest that under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including PFOA and other perfluorinated alkyls, including the presumed environmental degradant. EPA also has concerns that under some conditions of use, particularly non-industrial, commercial, or consumer use, the PMN substance could cause lung effects, based on limited data on some perfluorinated compounds. Concerns for the PMN substance are for lung toxicity from waterproofing of lung membrane, based on PMN properties. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I), based on a finding that these substances and their potential degradation products may present an unreasonable risk of injury to the environment and human health.

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into an MSDS, within 90 days.

2. Submission of certain environmental fate testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the consent order of the PMN substance.

3. No use of the PMN substance in consumer spray products.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of the modified aerobic activated sludge biodegradation test submitted by the company for EPA review would help characterize the possible degradation of the PMN substance. The submitter has agreed to submit the results of this test by the confidential production volume identified in the consent order. EPA had determined that the results of a phototransformation of chemicals on soil surfaces (Organisation for Economic Co-operation and Development (OECD) Draft Document January 2002) would help characterize the degradation potential of the PMN substance. The Order does not require this testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10878.

PMN Number P–14–125

Chemical name: 1-Octadecanaminium, *N*-(3-chloro-2-hydroxypropyl)-*N,N*-dimethyl-, chloride (1:1).

CAS number: 3001–63–6.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate for surfactant production. Based on test data on the PMN substance, as well as SAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 2 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use resulting in surface water concentrations exceeding 2 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10879.

PMN Numbers P–14–153, P–14–154, P–15–79, and P–15–80

Chemical names: Fatty acid rxn products with aminoalkylamines (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMN states that these substances will be used as chemical intermediates, additives for flotation products, and as adhesion promoters for use in asphalt applications. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. For the uses described in the PMN, releases of the substances are not expected to result in surface water concentrations exceeding 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances, excluding the uses described in the PMNs, result in in releases to surface water concentrations exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (Office of Chemical Safety and Pollution Prevention (OCSPP) Test Guideline 850.4500); log Kow and water solubility measurements; as well as either the fish acute toxicity mitigated by humic acid test (OPPTS Test Guideline 850.1085) or the whole sediment acute toxicity invertebrates, freshwater test (OPPTS Test Guideline 850.1735) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (OECD Test Guideline 23) be consulted to facilitate solubility in the test media. Testing should be tiered, starting with water solubility and log Kow measurements before proceeding with higher tier toxicity tests.

CFR citation: 40 CFR 721.10880.

PMN Numbers P–14–155 and P–14–156

Chemical names: Fatty acid amides (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the substances will be used as chemical intermediates, additives for flotation products, and adhesion promoters for use in asphalt applications. Based on SAR analysis of test data on analogous amides and aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 and 3 ppb respectively of the PMN substances P–14–155 and P–14–156 in surface waters. For the uses described in the PMNs, releases of the substances are not expected to result in surface water concentrations that exceed 2 ppb and 3 ppb of the PMN substances respectively. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances, excluding uses described in the PMNs, resulting in surface water concentrations exceeding 2 ppb (P–14–155) or 3 ppb (P–14–156) of the PMN substances may result in significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (OCSPP Test Guideline 850.4500); log Kow and water solubility measurements; as well as either the fish acute toxicity mitigated by humic acid test (OPPTS Test Guideline 850.1085) or the whole sediment acute toxicity invertebrates, freshwater test (OPPTS Test Guideline 850.1735) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (OECD Test Guideline 23) be consulted to facilitate solubility in the test media, because of the PMN's low water solubility. Testing should be tiered, starting with water solubility and log Kow measurements before proceeding with higher tier toxicity tests.

CFR citation: 40 CFR 721.10881.

PMN Number P–14–198

Chemical name: Trialkylammonium borodibenzoate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a color developer for general printing applications. Based on test data on the PMN substance and SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 47 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from domestic manufacture or from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 47 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing (defined by statute to include import), processing or use of the substance may present an unreasonable risk. EPA has determined, however, that any domestic manufacture or use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10882.

PMN Number P–14–324

Chemical name: Fatty ester derivatives, reaction products with alkanolamine, hydroxylated, borated (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a lubricating oil additive. Based on SAR analysis of test data on analogous boron compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 2 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing (defined by statute to include import), processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as a lubricating oil additive may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a chronic fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10883.

PMN Number P–14–397

Chemical name: Benzenepropanol, 1-benzoate.

CAS number: 60045–26–3.

Basis for action: The PMN states that the substance will be used as a plasticizer in adhesives for food-product packaging, a diluents-type plasticizer in plastisols, a coalescent in architectural paints and coatings, and a fragrance carrier in fragrances. Based on SAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the uses described in the PMN. For the uses described in the PMN, environmental releases did not exceed 5 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10884.

PMN Number P–14–448

Chemical name: Alcohols, C_{12-22}, distn. residues.

CAS number: 1476777–83–9.

Basis for action: The PMN states that the use of the substance will be used in formulation of defoamers used in the production of paper. Based on structure-activity relationship SAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface waters exceed releases from the use described in the PMN. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 7 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, any use where the cumulative molecular weights of the C_{12} and C_{14} components exceed 2 percent by weight of the overall molecular weight of the PMN substance may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. Before conducting these aquatic toxicity testing, EPA recommends chemical characterization of the alkyl range for the alcohol moiety and a water solubility test (OECD Test Guideline 105) should be conducted.

CFR citation: 40 CFR 721.10885.

PMN Number P–14–501 and P–14–502

Chemical names: Phosphoric acid, mixed Bu and decyl and octyl and 2-(2-phenoxyethoxy)ethyl and 2-phenoxyethyl esters (P–14–501), and Phosphoric acid, mixed Bu and decyl and octyl and 2-(2-phenoxyethoxy)ethyl and 2-phenoxyethyl esters, potassium salts (P–14–502).

CAS numbers: 1502809–48–4 (P–14–501) and 1502809–56–4 (P–14–502).

Basis for action: The PMN states that substances will be used as gellants for use in oil fracturing. Based on structure-activity relationship (SAR) analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substances in surface waters. As described in the PMNs, releases of the substances are not expected to result in surface water concentrations that exceed 4 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of substances resulting in releases to surface water concentrations exceeding 4 ppb may result in significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10886 (P–14–501) and 40 CFR 721.10887 (P–14–502).

PMN Numbers P–15–59, P–15–60, and P–15–104

Chemical names: Siloxanes and Silicones, 3-[(2-aminoethyl)amino]propyl Me, di-Me, reaction products with cadmium zinc selenide sulfide, lauric acid and oleylamine (P–15–59); Dodecanoic acid, reaction products with cadmium zinc selenide sulfide and oleylamine (P–15–60); and Phosphonic acid, P-tetradecyl-, reaction products with cadmium selenide (CdSe) (P–15–104).

CAS numbers: 1623456–05–2 (P–15–59); 1773514–92–3 (P–15–60); and 1773514–66–1 (P–15–104).

Effective date of TSCA section 5(e) consent order: May 5, 2015.

Basis for TSCA section 5(e) consent order: The PMNs state that the substances will be used as a down converter for an optical filter for light emitting diodes used in displays (P–15–59) and as chemical intermediates (P–15–60 and P–15–104). Based on SAR analysis of test data on analogous respirable, poorly soluble particulates and the presence of cadmium, EPA identified concerns for lung effects, kidney effects, and oncogenicity. In addition, EPA predicts chronic toxicity to aquatic organisms from exposure to cadmium. The Order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I), based on a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the consent order requires:

1. Use of impervious gloves to prevent dermal exposures, where there is a potential for dermal exposures.
2. Submission of certain material characterization data on P–15–59 by the time triggers specified in the consent order.
3. Manufacture, process, or use the PMN substances only in a liquid formulation.
4. Manufacture, process, and use P–15–59 only as a down converter for an optical filter for light emitting diodes used in displays.
5. Manufacture, process, and use of P–15–60 and P–15–104 only as chemical intermediates.
6. Disposal of the PMN substances only by incineration in a permitted hazardous waste incinerator.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the development of data on certain material characterization data specified in the consent order on PMN substance P–15–59 would help characterize the possible effects of the PMN substance. The submitter has agreed to submit the results of these studies prior to 3 and 18 month time triggers identified in the consent order. In addition, EPA determined that the results of a metabolism and pharmacokinetics test (OPPTS Test Guideline 870.7485) would help characterize the human health and environmental effect of the PMN substance. The Order does not require this testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10888 (P–15–59), 40 CFR 721.10889 (P–15–60), and 40 CFR 721.10890 (P–15–104).

PMN Number P–15–81

Chemical name: Alkyl silicate, polymer with 2-(chloromethyl)oxirane and 4,4′0-(1-methylethylidene)bis[phenol], alkoxylated (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an ingredient in liquid paint coating. Based on SAR analysis of test data on analogous epoxides, there were health concerns regarding skin and lung sensitization, mutagenicity, oncogenicity, developmental toxicity, male reproductive, liver, and kidney toxicity based on the epoxide oxidation product as well as irritation and lung toxicity expected from the ethoxy silane hydrolysis product from exposure to the PMN substance via dermal exposure. Further, based on SAR analysis of test data on analogous epoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, occupational exposures are expected to be minimal due to use of adequate dermal personal protection equipment and releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use without the use of impervious gloves, where there is a potential for dermal exposure, or any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in serious human health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OECD Test Guideline 422); a Zahn-Wellens/EMPA test (OPPTS Test Guideline 835.3200); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10891.

PMN Number P–15–109

Chemical name: Reaction product of a mixture of aromatic dianhydrides and aliphatic esters with an aromatic diamine (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an intermediate. Based on SAR analysis of test data on analogous anilines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 11 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 11 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 11 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10892.

PMN Number P–15–111

Chemical name: Fatty acids, tall-oil, reaction products with an ether and triethylenetetramine (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a hardener for coating systems. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 1 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing (defined by statute to include import), processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any domestic manufacture of the substance, or any use of the PMN substance other than as described in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10893.

PMN Number P–15–120

Chemical name: Substituted benzyl acrylate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a resin for industrial coating. Based on SAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10894.

PMN Number P–15–154

Chemical name: Fluoroalkyl acrylate copolymer (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: May 14, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a textile treatment. The Order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) based on a finding that the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into an MSDS, within 90 days.
2. Manufacture of the PMN substance: (a) According to the chemical composition section of the consent order, including analyzing and reporting certain starting raw material impurities to EPA; and (b) within the maximum established limits of certain fluorinated impurities of the PMN substance as stated in the consent order.
3. Submission of certain toxicity, physical-chemical property, and environmental fate testing on the PMN substance prior to exceeding the confidential production volume limits as specified in the consent order.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain toxicity and environmental fate testing would help characterize the PMN substance. The submitter has agreed to complete the testing identified in the testing section of the consent order by the confidential limits specified. In addition, EPA has determined that the results of a 90-day inhalation toxicity test in rats (OPPTS Test Guideline 870.3465/OECD Test Guideline 413) with a 60-day holding period, and certain physical chemical property and environmental fate testing identified in the consent order would help characterize the human health and fate effects of the PMN substance. The Order does not require this testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10895.

PMN Number P–15–176

Chemical name: 1-Hexanol, 6-mercapto-.

CAS number: 1633–78–9.

Basis for action: The PMN states that the substance will be used as a chemical intermediate to curable monomers. Based on SAR analysis of test data on analogous thiols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 8 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in surface water concentrations exceeding 8 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301B) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10896.

PMN Number P–15–177

Chemical name: Phenol, 2,2′-[1,2-disubstituted-1,2-ethanediyl] bis(iminomethylene)bis[substituted- (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a catalyst in the process to manufacture a crop protection chemical. Based on test data on the PMN substance, EPA identified concerns for blood toxicity to workers from dermal exposures to the PMN substance. As described in the PMN, occupational exposures are expected to be minimal due to use of adequate dermal personal protection equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without the use of chemical impervious gloves, where there is a potential for dermal exposure, or any use of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a skin absorption, *In vitro* method (OECD Test Guideline 428) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10897.

PMN Number P–15–188

Chemical name: Carbomonocycles, polymer with substituted heteromonocycle, succinate, methyl acrylate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a pigment-wetting resin for Ultra Violet (UV)-curable coatings. Based on SAR analysis of test data on analogous methacrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 7 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility test (OECD Test Guideline 105); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. The water solubility testing should be conducted prior to conducting the ecotoxicity testing as the results of the water solubility may change the recommended ecotoxicity testing.

CFR citation: 40 CFR 721.10898.

PMN Number P–15–190

Chemical name: Halogenated alkyl trimethylaminium halide (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be for cationization of starch. Based on test data on analogous alkylating agents, there were health concerns regarding mutagenicity, oncogenicity, developmental toxicity and respiratory sensitization based from exposure to the PMN substance via inhalation exposure. In addition, based on SAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 88 ppb of the PMN substance in surface waters. As described in the PMN, exposure is expected to be minimal due to use of adequate respiratory personal protection equipment and releases of the substance are not expected to result in surface water concentrations that exceed 88 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use without the use of NIOSH-certified respirator with an APF of at least 10, where there is a potential for respiratory exposure, or any use of the substance resulting in surface water concentrations exceeding 88 ppb may result in serious human health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a bacterial reverse mutation test, (OPPTS Test Guideline 870.5100); a mammalian erythrocyte micronucleus test (OPPTS Test Guideline 870.5395); an acute oral toxicity test (OPPTS Test Guideline 870.1100); a repeated dose 28-day oral toxicity study in rodents (OPPTS Test Guideline 870.3050); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a fish acute toxicity mitigated by humic acid test (OPPTS Test Guideline 850.1085); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10899.

PMN Number P–15–252

Chemical name: Titanium salt, reaction products with silica (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on SAR analysis of test data on analogous insoluble metal oxides, EPA identified concerns for lung toxicity if inhaled based on lung overload for respirable, poorly soluble particulates. For the use described in the PMN, inhalation exposures are expected to be minimal as the PMN is handled in an enclosed process. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use in a non-enclosed process, or any use of the substance other than listed in the PMN may result in significant adverse human health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with 60-day holding period and a particle size distribution/fiber length and diameter distributions (OECD Test Guideline 110) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10900.

PMN Number P–15–272

Chemical name: Formaldehyde, reaction products with aniline and aromatic mono- and di-phenol mixture (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a resin. Based on SAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability (OECD Test Guideline 301) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10901.

PMN Number P–15–276

Chemical name: Functionalized carbon nanotubes (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a thin film for electronic device applications. Based on SAR analysis of test data on analogous carbon nanotubes and other respirable poorly soluble particulates, EPA identified potential lung effects and skin penetration and toxicity induction from inhalation and dermal exposure to the PMN substance. Further, EPA predicts toxicity to aquatic organisms via releases of the PMN substance to surface water. Although there is potential for dermal exposure, EPA does not expect significant occupational exposures due to the use of impervious gloves, and because the PMN is used in a liquid and is not spray applied except in a closed system. Further, EPA does not expect environmental releases during the use identified in the PMN submission. Therefore, EPA has not determined that the proposed manufacturing, processing, and or use of the substance may present an unreasonable risk to human health or the environment. EPA has determined, however, that any use of the substance without the use of impervious gloves, where there is potential for dermal exposure; manufacturing the PMN substance for use other than as a thin film for electronic device applications; manufacturing, processing, or using the PMN substance in a form other than a liquid; use of the PMN substance involving an application method that generates a mist, vapor, or aerosol except in a closed system; or any release of the PMN substance into surface waters or disposal other than by landfill or incineration may cause serious health effects or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (OCSPP Test Guideline 850.4500); a 90-day inhalation toxicity test (OPPTS 870.3465) with additional testing parameters beyond those noted at CFR 870.3465, for using the 90-day subchronic protocol for nanomaterial assessment; a two-year inhalation bioassay (OPPTS Test Guideline 870.4200); and a surface charge by electrophoresis (for example, using ASTM E2865–12 or NCL Method PCC–2—Measuring the Zeta Potential of Nanoparticles) would help characterize the health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10902.

PMN Number P–15–295

Chemical name: Acrylated mixed metal oxides (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on SAR analysis of test data on respirable poorly soluble particulates, EPA identified potential lung effects and dermal toxicity from inhalation and dermal exposure to the PMN substance. Further, EPA predicts toxicity to aquatic organisms via releases of the PMN substance to surface water. Although there is potential for dermal exposure, EPA does not expect significant occupational exposures due to the use of impervious gloves, and because the PMN is used in a liquid and is not spray applied. Further, EPA does not expect environmental releases during the use identified in the PMN submission. Therefore, EPA has not determined that the proposed manufacturing, processing, and or use of the substance may present an unreasonable risk to human health or the environment. EPA has determined, however, that any use of the substance without the use of impervious gloves, where there is potential for dermal exposure; manufacturing, processing, or using the PMN substance in a form other than as a liquid; use of the PMN substance involving an application method that generates a mist, vapor, or aerosol; any release of the PMN substance into surface waters; or disposal other than by landfill or incineration may cause serious health effects or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b))(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with a 60-day holding period; a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental and health effects of the PMN substance.

CFR citation: 40 CFR 721.10903.

PMN Number P–15–306

Chemical name: Phenol, 1,1-dimethylalkyl derivatives (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a process intermediate. Based on SAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 13 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 13 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 13 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a Zahn-Wellens/EMPA test (OPPTS Test Guideline 835.3200) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10904.

PMN Number P–15–319

Chemical name: Butanedioic acid, 2-methylene-, dialkyl ester (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate for production of a lubricant additive. Based on SAR analysis of test data on analogous acrylates and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that resulting in surface water concentrations exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability (OECD Test Guideline 301) would help characterize the environmental effects of the PMN substance. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations.

CFR citation: 40 CFR 721.10905.

PMN Number P–15–324

Chemical name: Magnesium alkaryl sulfonate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the use of the substance will be as a detergent additive in crankcase lubricant applications. Based on submitted test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the

PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 1 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10906.

PMN Number P–15–326

Chemical name: Polyfluorohydrocarbon (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a specialty gas and transfer fluid. Based on test data on the PMN substance, EPA identified concerns for neurotoxicity and uncertain concern for cardiac sensitization. Further, based on SAR analysis of test data on analogous substances, EPA identified concerns for developmental toxicity. As described in the PMN, EPA does not expect significant occupational exposures due to use of adequate personal protective equipment, and consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN or any use in a consumer product may result in significant adverse human health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of 90-day inhalation toxicity (OPPTS Test Guideline 870.3465) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.10907.

PMN Number P–15–328

Chemical name: Aluminum calcium oxide salt (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: June 2, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the PMN substance will be as a cement additive. Based on SAR analysis of test data on analogous respirable, poorly soluble particulates, EPA identified concerns for lung toxicity based on lung overload. The Order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the consent order requires:

1. Hazard communication. Establishment and use of a hazard communication program, including human health precautionary statements on each label and the MSDS.
2. Use of personal protective equipment including a NIOSH-certified respirator with an APF of at least 10 or compliance with a NCEL of 5 mg/m^3 as an 8-hour time-weighted average (when there is potential inhalation exposure), when there is potential inhalation exposure.
3. Manufacture, processing or use of the PMN substance only for the use specified in the consent order.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) in rats would help characterize possible health effects of the substance. The Order does not require this testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10908.

PMN Number P–15–332

Chemical name: Polyalkyltrisiloxane (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a site-limited intermediate. Based on SAR analysis of test data on an analogous substance, there were health concerns regarding liver and kidney toxicity, thyroid effects, and reproductive and developmental toxicity from dermal and inhalation exposures to the PMN substance. Further, based on SAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. EPA also predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. Further, as described in the PMN, exposure is expected to be minimal due to use of adequate respiratory and dermal personal protection equipment and releases of the substance are not expected to result in surface water concentrations exceeding 4 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 4 ppb, any use other than that as a site-limited intermediate, or any use without the use of a NIOSH-certified respirator with gas/vapor cartridges and an APF of at least 10 and impervious gloves, may result in serious human health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a sediment-water lumbriculus toxicity test (OECD Test Guideline 225); a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OECD Test Guideline 422); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance. All ecotoxicity tests should analyze the PMN substance as well as the hydrolysis products.

CFR citation: 40 CFR 721.10909.

PMN Number P–15–356

Chemical names: Oxirane, 2,2′-[[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl] ethylidene]bis(4,1-phenyleneoxymethylene)]bis- (P–15–

356, Chemical A); and 2-Propanol, 1,3-bis[4-[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl]-1-[4-(2-oxiranylmethoxy)phenyl]ethyl] phenoxy]- (P–15–356, Chemical B).

CAS numbers: 115254–47–2 (P–15–356, Chemical A) and 180063–56–3 (P–15–356, Chemical B).

Basis for action: The PMN states that the substances will be used as additives in polymer formulation for electronics. Based on test data on the PMN substances and on SAR analysis of test data on analogous epoxides, EPA identified concerns for respiratory sensitization and irritation, mutagenicity, developmental toxicity, male reproduction toxicity, liver and kidney toxicity, and oncogenicity. Additionally, based on SAR analysis of test data on analogous polyepoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. Further, EPA has concerns that the PMN substances are potentially PBT chemicals as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999) (FRL–6097–7). EPA estimates that the PMN substances will persist in the environment more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. For the use described in the PMN, EPA expects occupational exposures to be minimal and does not expect releases to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as additives in polymer formulation for electronics or any use of the substances resulting in releases to surface waters may cause serious human health or significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OECD Test Guideline 422); a sediment-water chironomid life-cycle toxicity test (OECD Test Guideline 233), using spiked water or spiked sediment; a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10910 (P–15–356, chemical A) and 40 CFR 721.10911 (P–15–356, chemical B).

PMN Number P–15–363

Chemical name: Aliphatic acrylate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a monomer. Based on SAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10912.

PMN Number P–15–378

Chemical name: Diisocyanato hexane, homopolymer, alkanoic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a dual cure/UV cure adhesion/barrier coating for wood substrates. Based on SAR analysis of test data on analogous diisocyanates, EPA identified concerns for respiratory sensitization. As described in the PMN, EPA does not expect significant occupational dermal or inhalation exposure due to use of adequate personal protective equipment and consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10 where there is a potential for inhalation exposure, or any use in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10913.

PMN Number P–15–382

Chemical name: Polyitaconic acid, sodium zinc salt (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as an odor neutralization for pet litter and cleaning hard surface surfaces, fabrics, skin and hair; an odor neutralization for air car; and an odor neutralization for waste processing and solid waste management in paper, oil, gas, mining, agriculture, food and municipal industries. Based on SAR analysis of test data on analogous zinc salts, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 4 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test

(OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10914.

PMN Number P–15–411

Chemical name: Fatty acid esters with polyols polyalkyl ethers (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an anti-rust coating solution additive. Based on SAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 30 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 30 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 30 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10915.

PMN Number P–15–435

Chemical name: 2,7-Naphthalenedisulfonic acid, 4-amino-3-[substituted]-5-hydroxy-6-[(1E)-2-phenyldiazenyl]-, lithium salt (1:3) (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a direct anionic dyestuff for the printing industry. Based on the results of a 28-day oral study for the PMN substance, EPA predicts anemia, effects on the adrenals, spleen, kidney, lymph nodes and immunotoxicity. In addition, based on the lithium salt of the PMN, EPA identified concerns for developmental toxicity and neurotoxicity. Further, based on SAR analysis of test data on analogous azo reduction products, EPA identified concerns for blood effects, developmental toxicity, oncogenicity, and mutagenicity. As described in the PMN, EPA does not expect significant risk to workers due to use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than in a liquid formulation could result in exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(i) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of an ames assay (OPPTS Test Guideline 870.5100) with the rival modification; a mouse micronucleus assay conducted by the oral route (OPPTS Test Guideline 870.5395); and a combined repeated dose and developmental toxicity and reproductive toxicity screening test (OPPTS Test Guideline 870.3650) would help to characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.10916.

PMN Number P–15–492

Chemical name: Polymethylsiloxane, distillation residues (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a site-limited intermediate. Based on SAR analysis test data on analogous silanes, EPA identified concerns for mutagenicity, liver and kidney toxicity, thyroid effects, and reproductive and developmental toxicity from dermal and inhalation exposures to the PMN substance. Further, based on SAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. For the intermediate use described in the PMN, occupational exposures are expected to be minimal due to the use of adequate respiratory and dermal personal protection equipment, and releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without the use of a NIOSH-certified respirator with gas/vapor cartridges and an APF of at least 10, where there is a potential for inhalation exposures, any use of the substance without the use of impervious gloves, where there is a potential for dermal exposures; any use of the substance other than an intermediate; or any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in serious human health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a sediment-water lumbriculus toxicity test (OECD Test Guideline 225) using spiked sediment; a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test (OECD Test Guideline 422); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance. All ecotoxicity tests should analyze for the PMN substance as well as the hydrolysis products.

CFR citation: 40 CFR 721.10917.

PMN Number P–15–502

Chemical name: Perfluorobutanesulfonamide and polyoxyalkylene containing polyurethane (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: November 4, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a protective treatment. EPA has concerns for potential incineration or other decomposition products of the PMN substance. These fluorinated decomposition products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers which suggest that under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including PFOA and other perfluorinated alkyls, including the presumed environmental degradant. EPA also has concerns that under some conditions of use, particularly non-industrial, commercial, or consumer use, the PMN substance could cause lung effects, based on limited data on some perfluorinated compounds. Concerns for the PMN substance are for lung toxicity from waterproofing of lung membrane, based on PMN properties. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I), based on a finding that the substance and its potential intermediate and/or ultimate degradation products may present an unreasonable risk of injury to the environment and human health.

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into an MSDS, within 90 days.

2. Submission of certain environmental fate testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the consent order of the PMN substance.

3. No use of the PMN substance in consumer spray products.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of an aerobic and anaerobic transformation in soil test (OECD Test Guideline 307) would help characterize the possible degradation of the PMN substance. The submitter has agreed to submit the results of this test by the confidential production volume identified in the consent order. EPA had determined that the results of a phototransformation of chemicals on soil surfaces (OECD Draft Document January 2002) would help characterize the degradation potential of the PMN substance. The Order does not require this testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10918.

PMN Number P–15–542

Chemical name: Quaternary ammonium compounds, (3-chloro-2-hydroxypropyl)coco alkyldimethyl, chlorides.

CAS number: 690995–44–9.

Basis for action: The PMN states that the substance will be used as an intermediate for surfactant production, and as a chemical intermediate for sale into commerce. Based on SAR analysis (quaternary ammonium) surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 24 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 24 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 24 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10919.

PMN Number P–15–559

Chemical name: Modified diphenylmethane diisocyanate prepolymer with polyol (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a raw material for flexible foam. Based on SAR analysis of analogous diisocyanates, EPA identified concerns for potential dermal and respiratory sensitization from dermal and inhalation exposures, and for pulmonary toxicity from inhalation exposure, to the PMN substance where the average molecular weight is below 7,500 daltons and any molecular weight species is below 1,000 daltons. For the molecular weight distribution described in the PMN, significant occupational exposures are not expected. Therefore, EPA has not determined that the proposed manufacture of the substance may present an unreasonable risk. EPA has determined, however, that any manufacture of the PMN substance with an average molecular weight below 7,500 daltons, and where any molecular weight species is below 1,000 daltons may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10920.

PMN Number P–15–573

Chemical name: 2-Furancarboxyaldehyde, 5-(chloromethyl)-.

CAS number: 1623–88–7.

Basis for action: The PMN states that the use of the substance will be as a chemical intermediate. Based on SAR analysis of test data on analogous aldehydes, the EPA identified human health concerns for liver toxicity, neurotoxicity, sensitization, and cancer to workers exposed through dermal and inhalation routes. For the chemical intermediate use described in the PMN, occupational exposures are expected to be minimal due to the use of adequate personal protective equipment and a continuous reaction process such that no greater than 50 kilograms of the PMN substance is present in the workplace at a given time for this use. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use without the use of a NIOSH-certified respirator with an APF of at least 50, where there is a potential for inhalation exposures; any use without the use of impervious gloves, where there is a potential for dermal exposures, any use of the substance other than as a chemical intermediate; or any use beyond the annual production volume limit of 15,000 kilograms may result in serious human health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization (OECD Test Guideline 406) would help characterize the human health effects of the PMN substance; a combined repeated dose toxicity test with the reproduction/developmental toxicity screening test (OECD Test Guideline 422) with functional observational battery (FOB); a standard test method for permeation of liquids and gases through protective clothing materials under conditions of continuous contact (ASTM Test Guideline F739) using the format specified in the standard guide for documenting the results of chemical permeation testing of materials used in protective clothing materials (ASTM Test Guideline F1194–99(2010)); and a carcinogenicity test (OECD Test the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10921.

PMN Number P–15–607

Chemical name: 1,2,4,5,7,8-Hexoxonane, 3,6,9-trimethyl-, 3,6,9-tris(alkyl) derivs. (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an initiator for polymerization. Based on data on the PMN substance, as well as SAR analysis of test data on analogous peroxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 56 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 56 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) using a solvent where the effects of the solvent are already known or measured, would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10922.

PMN Number P–15–671

Chemical name: 9-Octadecen-1-amine, hydrochloride (1:1), (9*Z*)-.

CAS number: 41130–29–4.

Basis for action: The PMN states that the substance will be used as an emulsifying agent used in the production of asphalt emulsions for chipsealing and other road maintenance techniques. Based on test data for the PMN substance, as well as SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10923.

PMN Numbers P–15–689 and P–15–690

Chemical names: Vegetable fatty acid alkyl esters (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the substances will be used as chemical intermediates. Based on SAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substances to surface water exceeds releases from the use described in the PMN. For the chemical intermediate use described in the PMN, environmental releases did not exceed 1 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as an intermediate may result in significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help to characterize the environmental Depending on the results of these tests, EPA has determined that the results of an aerobic and anaerobic metabolism test (OECD Test Guideline 308) in aquatic sediment systems test; and a sediment water chironomid life-cycle toxicity test (OECD Test Guideline 233) using spiked water or spiked sediment would help to further characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10924.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 10 of the 55 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit VI.).

In the other 45 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to

- EPA will ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is July 15, 2016 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before June 15, 2016.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before June 15, 2016, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for 10 of the 55 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The identities of 41 of the 55 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates May 16, 2016 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 for a more detailed discussion of the cutoff date for ongoing uses.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).
2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.* ASTM International standards are available at *http://www.astm.org/Standard/index.shtml.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate

SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.*, the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2015–0810.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this action.

This action is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 3, 2016.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * *	* *
Significant New Uses of Chemical Substances	
* * *	* *
721.10875	2070–0012
721.10876	2070–0012
721.10877	2070–0012
721.10878	2070–0012
721.10879	2070–0012
721.10880	2070–0012
721.10881	2070–0012
721.10882	2070–0012
721.10883	2070–0012
721.10884	2070–0012
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721.10917	2070–0012
721.10918	2070–0012
721.10919	2070–0012
721.10920	2070–0012
721.10921	2070–0012
721.10922	2070–0012
721.10923	2070–0012
721.10924	2070–0012
721.10925	2070–0012
* * *	* *

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PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10875 to subpart E to read as follows:

§ 721.10875 Alkali transition metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkali transition metal oxide (PMN P–11–150) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* (A) Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b)(concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an Assigned Protection Factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(*1*) Any NIOSH-certified air-purifying elastomeric half-mask respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters.

(*2*) Any appropriate NIOSH-certified N100 (if oil aerosols absent), R100, or P100 filtering facepiece respirator.

(*3*) Any NIOSH-certified air-purifying full facepiece respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters.

(*4*) Any NIOSH-certified negative pressure (demand) supplied air respirator equipped with a half-mask.

(*5*) Any NIOSH-certified negative pressure (demand) self-contained breathing apparatus (SCBA) equipped with a half-mask.

(B) As an alternative to the respiratory requirements listed here, a manufacturer or processor may choose to follow the New Chemical Exposure Limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 2.4 mg/m^{3} as an 8-hour time weighted average (TWA) verified by actual monitoring data.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a) through (e)(concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), (g)(1)(viii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv)(use respiratory protection, or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 2.4 mg/m^{3}), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 5. Add § 721.10876 to subpart E to read as follows:

§ 721.10876 Perfluoroalkyl substituted alkyl sulfonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl substituted alkyl sulfonate (PMN P–11–484) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k)(analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities; and use other described in the consent order), (o)(use in a consumer product that could be spray applied), and (q).

(ii) *Disposal.* Requirements as specified in § 721.85. Incineration of wastes in an incinerator operating at the temperature of at least 1,000 degrees Celsius and a residence time of minimum of 2 seconds. Any tank or vessel washings, residues from transport vessels or tanks, and similar materials that are captured and retained in the normal course of manufacturing and processing for re-use in manufacturing of the PMN substance or products made from the PMN substance are exempt from this method of disposal.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1) apply to the PMN substance except under the terms specified in the consent order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraphs (a)(2)(i) and (iii) of this section.

■ 6. Add § 721.10877 to subpart E to read as follows:

§ 721.10877 Polyfluorinated alkyl quaternary ammonium chloride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinated alkyl quaternary ammonium chloride (PMN P–11–543) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)(analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities; and use other described in the consent order), (o)(use in a consumer product that could be spray applied), and (q).

(ii) *Disposal.* Requirements as specified in § 721.85. Incineration of wastes in an incinerator operating at the temperature of at least 1,000 degrees Celsius and a residence time of minimum of 2 seconds. Any tank or vessel washings, residues from transport vessels or tanks, and similar materials that are captured and retained in the normal course of manufacturing and processing for re-use in manufacturing of the PMN substance or products made from the PMN substance are exempt from this method of disposal.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1) apply to the PMN substance except under the terms specified in the consent order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraphs (a)(2)(i) and (iii) of this section.

■ 7. Add § 721.10878 to subpart E to read as follows:

§ 721.10878 Polyfluorinatedalkylsulfonyl substituted alkane derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorinatedalkylsulfonyl substituted alkane derivative (PMN P–14–67) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72. A significant new use of the substance is any manner or method of manufacture or processing associated with any use of the substance without providing risk notification as follows:

(A) If as a result of the test data required under TSCA section 5(e) consent order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k) and (o)(use in a consumer product that could be spray applied), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (h), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 8. Add § 721.10879 to subpart E to read as follows:

§ 721.10879 1-Octadecanaminium, *N*-(3-chloro-2-hydroxypropyl)-*N,N*-dimethyl-, chloride (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-octadecanaminium, *N*-(3-chloro-2-hydroxypropyl)-*N,N*-dimethyl-, chloride (1:1) (PMN P–14–125; CAS No. 3001–63–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10880 to subpart E to read as follows:

§ 721.10880 Fatty acid rxn products with aminoalkylamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid rxn products with aminoalkylamines (PMNs P–14–153, P–14–154, P–15–79, and P–15–80) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substances is any use other than as chemical intermediates, additives for flotation products, or adhesion promoters for use in asphalt applications where the surface water concentrations described under paragraph (a)(3)(i) of this section are exceeded.

(ii) [Reserved].

(3) The significant new uses for any use other than as chemical intermediated, additives for flotation products, or adhesion promoters for use in asphalt applications are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 10. Add § 721.10881 to subpart E to read as follows:

§ 721.10881 Fatty acid amides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amides (PMNs P–14–155 and P–14–156) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substances is any use other than as chemical intermediates, additives for flotation products, or adhesion promoters for use in asphalt applications where the surface water concentrations described under paragraph (a)(3)(i) of this section are exceeded.

(ii) [Reserved].

(3) The significant new uses for any use other than as chemical intermediated, additives for flotation products, or adhesion promoters for use in asphalt applications are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2 for P–14–155 and N=3 for P–14–156).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. Add § 721.10882 to subpart E to read as follows:

§ 721.10882 Trialkylammonium borodibenzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as trialkylammonium borodibenzoate (PMN P–14–198) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 12. Add § 721.10883 to subpart E to read as follows:

§ 721.10883 Fatty ester derivatives, reaction products with alkanolamine, hydroxylated, borated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty ester derivatives, reaction products with alkanolamine, hydroxylated, borated (PMN P–14–324) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is a use other than as a lubricating oil additive.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10884 to subpart E to read as follows:

§ 721.10884 Benzenepropanol, 1-benzoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenepropanol, 1-benzoate (PMN P–14–397; CAS No. 60045–26–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is use other than as a plasticizer in adhesives for food-product packaging; a diluents-type plasticizer in plastisol; a coalescent in architectural paints and coating; and a fragrance carrier in fragrances.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10885 to subpart E to read as follows:

§ 721.10885 Alcohols, C_{12-22}, distn. residues.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alcohols, C_{12-22}, distn. residues (PMN P–14–448; CAS No. 1476777–83–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use where the cumulative molecular weights of the C_{12} and C_{14} components exceed 2 percent by weight of the overall molecular weight of the PMN substance.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10886 to subpart E to read as follows:

§ 721.10886 Phosphoric acid, mixed Bu and decyl and octyl and 2-(2-phenoxyethoxy)ethyl and 2-phenoxyethyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphoric acid, mixed Bu and decyl and octyl and 2-(2-phenoxyethoxy)ethyl and 2-phenoxyethyl esters (PMN P–14–501; CAS No. 1502809–48–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10887 to subpart E to read as follows:

§ 721.10887 Phosphoric acid, mixed Bu and decyl and octyl and 2-(2-phenoxyethoxy)ethyl and 2-phenoxyethyl esters, potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphoric acid, mixed Bu and decyl and octyl and 2-(2-phenoxyethoxy)ethyl and 2-phenoxyethyl esters, potassium salts (PMN P–14–502; CAS No.

1502809–56–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add § 721.10888 to subpart E to read as follows:

§ 721.10888 Siloxanes and Silicones, 3-[(2-aminoethyl)amino)propyl Me, di-Me, reaction products with cadmium zinc selenide sulfide, lauric acid and oleylamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as siloxanes and silicones, 3-[(2-aminoethyl)amino)propyl Me, di-Me, reaction products with cadmium zinc selenide sulfide, lauric acid and oleylamine (PMN P–15–59; CAS No. 1623456–05–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (three months and eighteen months). A significant new use of the substance is manufacture, process, or use the chemical substance other than as a down converter for an optical filter for light emitting diodes used in displays, or other than in a liquid formulation.

(iii) *Disposal.* Requirements as specified in § 721.85. It is a significant new use to dispose of the chemical substance other than by incineration in a permitted hazardous waste incinerator.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10889 to subpart E to read as follows:

§ 721.10889 Dodecanoic acid, reaction products with cadmium zinc selenide sulfide and oleylamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as dodecanoic acid, reaction products with cadmium zinc selenide sulfide and oleylamine (PMN P–15–60; CAS No. 1773514–92–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture, process, or use the chemical substance other than as a chemical intermediate or other than in a liquid formulation.

(iii) *Disposal.* Requirements as specified in § 721.85. It is a significant new use to dispose of the chemical substance other than by incineration in a permitted hazardous waste incinerator.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i) and (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10890 to subpart E to read as follows:

§ 721.10890 Phosphonic acid, P-tetradecyl-, reaction products with cadmium selenide (CdSe).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphonic acid, P-tetradecyl-, reaction products with cadmium selenide (CdSe) (PMN P–15–104; CAS No. 1773514–66–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture, process, or use the chemical substance other than as a chemical intermediate or other than in a liquid formulation.

(iii) *Disposal.* Requirements as specified in § 721.85 It is a significant new use to dispose of the chemical substance other than by incineration in a permitted hazardous waste incinerator.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.10891 to subpart E to read as follows:

§ 721.10891 Alkyl silicate, polymer with 2-(chloromethyl)oxirane and 4,4′-(1-methylethylidene)bis[phenol], alkoxylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl silicate, polymer with 2-(chloromethyl)oxirane and 4,4′-(1-methylethylidene)bis[phenol], alkoxylated (PMN P–15–81) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in 40 CFR 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.108992 to subpart E to read as follows:

§ 721.10892 Reaction product of a mixture of aromatic dianhydrides and aliphatic esters with an aromatic diamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction product of a mixture of aromatic dianhydrides and aliphatic esters with an aromatic diamine (PMN P–15–109) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=11).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. Add § 721.10893 to subpart E to read as follows:

§ 721.10893 Fatty acids, tall-oil, reaction products with an ether and triethylenetetramine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, tall-oil, reaction products with an ether and triethylenetetramine (PMN P–15–111) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 23. Add § 721.10894 to subpart E to read as follows:

§ 721.10894 Substituted benzyl acrylate (generic)

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzyl acrylate (PMN P–15–120) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. Add § 721.10895 to subpart E to read as follows:

§ 721.10895 Fluoroalkyl acrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as fluoroalkyl acrylate copolymer (PMN P–15–154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72. A significant new use of the substance is any manner or method of manufacture or processing associated with any use of the substance without providing risk notification as follows:

(A) If as a result of the test data required under TSCA section 5(e) consent order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 25. Add § 721.10896 to subpart E to read as follows:

§ 721.10896 1-Hexanol, 6-mercapto-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-hexanol, 6-mercapto-. (PMN P–15–176; CAS No.1633–78–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. Add § 721.10897 to subpart E to read as follows:

§ 721.10897 Phenol, 2,2′-[1,2-disubstituted-1,2-ethanediyl] bis(iminomethylene)bis[substituted-(generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified generically as phenol, 2,2′-[1,2-disubstituted-1,2-ethanediyl] bis(iminomethylene)bis[substituted-(PMN P–15–177) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 27. Add § 721.10898 to subpart E to read as follows:

§ 721.10898 Carbomonocycles, polymer with substituted heteromonocycle, succinate, methyl acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbomonocycles, polymer with substituted heteromonocycle, succinate, methyl acrylate (PMN P–15–188) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use other than as a pigment-wetting resin for UV-curable coatings.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 28. Add § 721.10899 to subpart E to read as follows:

§ 721.10899 Halogenated alkyl trimethylaminium halide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkyl trimethylaminium halide (PMN P–15–190) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(i), (b)(concentration set at 0.1 percent) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=88).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 29. Add § 721.10900 to subpart E to read as follows:

§ 721.10900 Titanium salt, reaction products with silica (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as titanium salt, reaction products with silica (PMN P–15–252) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying elastomeric half-mask respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters.

(B) NIOSH-certified N100 (if oil aerosols absent), R100, or P100 filtering facepiece respirator.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 30. Add § 721.10901 to subpart E to read as follows:

§ 721.10901 Formaldehyde, reaction products with aniline and aromatic mono- and di-phenol mixture (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as formaldehyde, reaction products with aniline and aromatic mono- and di-phenol mixture (PMN P–15–272) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. Add § 721.10902 to subpart E to read as follows:

§ 721.10902 Functionalized carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as functionalized carbon nanotubes (PMN P–15–276) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), and (a)(3). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.*, enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.*, workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is manufacture, process, or use of the PMN substance other than in a liquid formulation. A significant new use is use other than as a thin film for electronic device applications or any use involving an application method that generates a vapor, mist, or aerosol unless such application method occurs in an enclosed process. An enclosed process is defined as an operation that is designed and operated so that there is no release associated with normal or routine production processes into the environment of any substance present in the operation. An operation with inadvertent or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. Add § 721.10903 to subpart E to read as follows:

§ 721.10903 Acrylated mixed metal oxides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylated mixed metal oxides (PMN P–15–295) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), and (a)(3). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.*, enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.*, workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (v)(2), (w)(1), (w)(2), (x)(1), (x)(2), and (y)(1).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 33. Add § 721.10904 to subpart E to read as follows:

§ 721.10904 Phenol, 1,1-dimethylalkyl derivatives (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically phenol, 1,1-dimethylalkyl derivatives (PMN P–15–306) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=13).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 34. Add § 721.10905 to subpart E to read as follows:

§ 721.10905 Butanedioic acid, 2-methylene-, dialkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as butanedioic acid, 2-methylene-, dialkyl ester (PMN P–15–319) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 35. Add § 721.10906 to subpart E to read as follows:

§ 721.10906 Magnesium alkaryl sulfonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as magnesium alkaryl sulfonate (PMN P–15–324) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use other than as a detergent additive in crankcase lubricant applications.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 36. Add § 721.10907 to subpart E to read as follows:

§ 721.10907 Polyfluorohydrocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluorohydrocarbon (PMN P–15–326) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(j) and (o).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 37. Add § 721.10908 to subpart E to read as follows:

§ 721.10908 Aluminum calcium oxide salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aluminum calcium oxide salt (PMN P–15–328) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(4), engineering control measures (*e.g.*, enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.*, workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an Assigned Protection Factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting face piece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full face piece.

As an alternative to the respiratory requirements listed here, a manufacturer or processor may choose to follow the New Chemical Exposure Limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 5 mg/m^3 as an 8-hour time weighted average verified by actual monitoring data.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a) trhough (f)(concentration set at 1.0 percent), (g)(1)(ii), (g)(2)(When using this substance avoid breathing the substance, and use respiratory protection, or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 5 mg/m^3.) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 38. Add § 721.10909 to subpart E to read as follows:

§ 721.10909 Polyalkyltrisiloxane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyalkyltrisiloxane (PMN P–15–332) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(i), (b)(concentration set at 1.0 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.*, enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.*, workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 39. Add § 721.10910 to subpart E to read as follows:

§ 721.10910 Oxirane, 2,2′-[[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl] ethyl]phenyl]ethylidene]bis(4,1-phenyleneoxymethylene)]bis- (P–15–356, Chemical A).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, 2,2′-[[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl] ethylidene]bis(4,1-phenyleneoxymethylene)]bis- (PMN P–15–356, Chemical A; CAS No. 115254–47–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use other than as an additive in polymer formulation for electronics.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 40. Add § 721.10911 to subpart E to read as follows:

§ 721.10911 2-Propanol, 1,3-bis[4-[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl]-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenoxy]- (P–15–356, Chemical B).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propanol, 1,3-bis[4-[1-[4-[1-methyl-1-[4-(2-oxiranylmethoxy)phenyl]ethyl]phenyl]-1-[4-(2-oxiranylmethoxy)phenyl] ethyl]phenoxy]- (PMN P–15–356, Chemical B; CAS No. 180063–56–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use other than as an additive in polymer formulation for electronics.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 41. Add § 721.10912 to subpart E to read as follows:

§ 721.10912 Aliphatic acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aliphatic acrylate (PMN P–15–363) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 42. Add § 721.10913 to subpart E to read as follows:

§ 721.10913 Diisocyanato hexane, homopolymer, alkanoic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as diisocyanato hexane, homopolymer, alkanoic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked (PMN P–15–378) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.*, enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.*, workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 43. Add § 721.10914 to subpart E to read as follows:

§ 721.10914 Polyitaconic acid, sodium zinc salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyitaconic acid, sodium zinc salt (PMN P–15–382) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use other than as an odor neutralization for pet litter and cleaning hard surface surfaces, fabrics, skin and hair; an odor neutralization for air car; and an odor neutralization for waste processing and solid waste management in paper, oil, gas, mining, agriculture, food and municipal industries.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 44. Add § 721.10915 to subpart E to read as follows:

§ 721.10915 Fatty acid esters with polyols polyalkyl ethers (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid esters with polyols polyalkyl ethers (PMN P–15–411) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=30).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 45. Add § 721.10916 to subpart E to read as follows:

§ 721.10916 2,7-Naphthalenedisulfonic acid, 4-amino-3-[substituted]-5-hydroxy-6-[(1E)-2-phenyldiazenyl]-, lithium salt (1:3) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,7-naphthalenedisulfonic acid, 4-amino-3-[substituted]-5-hydroxy-6-[(1E)-2-phenyldiazenyl]-, lithium salt (1:3) (PMN P–15–435) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is any use other that in a liquid formulation.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 46. Add § 721.10917 to subpart E to read as follows:

§ 721.10917 Polymethylsiloxane, distillation residues (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymethylsiloxane, distillation residues (PMN P–15–492) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operations, general and local ventilation) or administrative control measure (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 10 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified powered air-purifying respirator with a hood or helmet and with appropriate gas-vapor (acid gas, organic vapor, or substance specific) cartridges.

(ii) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 47. Add § 721.10918 to subpart E to read as follows:

§ 721.10918 Perfluorobutanesulfonamide and polyoxyalkylene containing polyurethane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluorobutanesulfonamide and polyoxyalkylene containing polyurethane (PMN P–15–502) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substance is any manner or method of manufacture or processing associated with any use of the substance without providing risk notification as follows:

(A) If as a result of the test data required under TSCA section 5(e) consent order for the substance, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (h), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 48. Add § 721.10919 to subpart E to read as follows:

§ 721.10919 Quaternary ammonium compounds, (3-chloro-2-hydroxypropyl)coco alkyldimethyl, chlorides.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as quaternary ammonium compounds, (3-chloro-2-hydroxypropyl)coco alkyldimethyl, chlorides (PMN P–15–542; CAS No. 690995–44–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=24).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 49. Add § 721.10920 to subpart E to read as follows:

§ 721.10920 Modified diphenylmethane diisocyanate prepolymer with polyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified diphenylmethane diisocyanate prepolymer with polyol (PMN P–15–559) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is manufacture of the substance where the average molecular weight is below 7,500 daltons, and where any molecular weight species is below 1,000 daltons.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 50. Add § 721.10921 to subpart E to read as follows:

§ 721.10921 2-Furancarboxyaldehyde, 5-(chloromethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-furancarboxyaldehyde, 5-(chloromethyl)- (PMN P–15–573; CAS No. 1623–88–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 50 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified powered air-purifying respirator with a tight-fitting half mask and HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a tight-fitting half mask.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator equipped with a full facepiece.

(ii) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(g) (chemical intermediate use in a continuous reaction process such that no greater than 50 kilograms is present in the workplace at a given time) and (s)(15,000 kilograms).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 51. Add § 721.10922 to subpart E to read as follows:

§ 721.10922 1,2,4,5,7,8-Hexoxonane, 3,6,9-trimethyl-, 3,6,9-tris(alkyl) derivs. (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 11,2,4,5,7,8-hexoxonane, 3,6,9-trimethyl-, 3,6,9-tris(alkyl) derivs. (PMN P–15–607) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 52. Add § 721.10923 to subpart E to read as follows:

§ 721.10923 9-Octadecen-1-amine, hydrochloride (1:1), (9Z)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 9-octadecen-1-amine, hydrochloride (1:1), (9Z)- (PMN P–15–671; CAS No. 41130–29–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 53. Add § 721.10924 to subpart E to read as follows:

§ 721.10924 Vegetable fatty acid alkyl esters (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as vegetable fatty acid alkyl esters (PMNs P–15–689 and P–15–690) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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